

Amendment No. 1 to SB3013

**Henry
Signature of Sponsor**

AMEND Senate Bill No. 3013

House Bill No. 2937*

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by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Effective July 1, 2002:

(1) Tennessee Code Annotated, Title 9, Chapter 4, Part 52, is amended by adding the following language as a new, appropriately designated section:

§ 9-4-5204.

(a) Notwithstanding the provisions of any law to the contrary, in no fiscal year shall appropriations for general expenditures from state tax revenues received in such year exceed six percent (6%) of the state's economy. For purposes of this section, "general expenditures" shall mean appropriations [*of amounts collected from state taxes identified pursuant to § 9-4-5202(b)*], to the debt service fund, the capital projects fund, the highway fund, the education trust fund, the general fund, the reserve for revenue fluctuations or any other fund or account. For purposes of this section, the "state's economy" shall be measured by personal income as determined pursuant to § 9-4-5201(b).

(b) **If** state tax revenues collected in any fiscal year exceed the amount of such revenues that can be appropriated under the limit imposed by this section, **then** such excess amount must be rebated to taxpayers. To the extent practical, any such rebate shall be made to

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taxpayers on a pro rata basis in relation to taxes paid under the provisions of § 67-2-204 for the tax year for which such excess collections were received; provided, however, **if** § 67-2-204 is not implemented during such tax year, **then**, to the extent practical, any such rebate shall be made to Tennessee taxpayers based on department of revenue schedules reflecting typical sales and use tax liability based on household income. The commissioner of revenue shall determine the estimated aggregate cost of processing such tax rebate payments to taxpayers. To the extent excess tax revenues exceed the processing cost for rebates, the net amount shall be the aggregate amount of rebates to be made. **If** the aggregate cost of processing rebates is estimated to exceed the excess tax collections, **then** such excess tax collections must be placed into the reserve for revenue fluctuations established by § 9-4-211.

(2) Tennessee Code Annotated, Title 9, Chapter 4, is amended by adding the following language as a new, appropriately designated part:

§ 9-4-5601. Notwithstanding any provision of law to the contrary, after July 1, 2002 any bill proposing an increase in, exemption from, or additional credit or deduction against the state sales and use or Tennessee flat tax rates established by the provisions of this public chapter must be passed by a two-thirds (2/3) vote of the total membership of the senate and a two-thirds (2/3) vote of the total membership of the house of representatives.

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(3) Tennessee Code Annotated, Title 9, Chapter 4, is amended by adding the following language as a new, appropriately designated part:

§ 13-15-101.

(a) This part shall be known and may be cited as the "Tennessee Strategic Planning Act of 2002".

(b) The provisions of this part are a pilot project applying only to the state agencies designated under the provisions of § 13-5-103.

(c) The provisions of this part are deleted on June 30, 2006, unless otherwise provided by enactment of the general assembly.

§ 13-5-102.

(a) The general assembly finds and declares that:

(1) To promote intergovernmental coordination, accountability and the effective allocation of resources, the state should set goals to provide direction and guidance for state agencies in the development and implementation of their respective plans, programs, and services.

(2) Regular evaluation of the goals and state agency strategic plans is necessary to inform the public whether state goals are being attained. To accomplish this purpose, the state agency strategic plans should be evaluated annually with any necessary revisions prepared through coordinated action by state agencies and the state's chief planning officer.

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(b) It is the intent of the general assembly that:

(1) The state planning process and the state agency strategic plans provide direction for the delivery of governmental services, a means for defining and achieving the specific goals of the respective state agencies, and a method for evaluating the accomplishment of those goals and establishing more accountability for all state agencies.

(2) State agency strategic plans shall be effectively coordinated to ensure the establishment of appropriate agency priorities and to facilitate the orderly, positive management of agency activities consistent with the public interest. It is also intended that the implementation of the state agency strategic plans enhance the quality of life of the citizens of the state.

§ 13-5-103.

As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of finance and administration.

(2) "Goal" means the long-term end toward which programs and activities are ultimately directed.

(3) "Objective" means a specific, measurable, intermediate end that is achievable and marks progress toward a goal.

(4) "Policy" means the way in which programs and activities are conducted to achieve an identified goal.

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(5) "State agency" or "agency" means any one (1) of the three (3) agencies within state government selected by the commissioner to participate in the pilot programs established under this act. The three (3) agencies may include one (1) higher education institution or non-formula unit selected by the commissioner in consultation with the executive director of the Tennessee higher education commission.

(6) "State agency strategic plan" means the statement of priority directions that an agency will take to carry out its mission within the context of any statutory mandates and authorizations given to the agency.

(7) "Strategy" means a means to an end; a policy, program, action or decision that an agency uses to achieve an objective.

§ 13-5-104. The commissioner shall serve as the chief planning officer of the state and, in consultation with the governor, shall conduct an annual review and revision of the state agency strategic plans.

§ 13-5-105.

(a) The head of the state agency shall select from within such agency a person to be designated as the planning officer for such entity. The agency planning officer shall be responsible for coordinating with the commissioner of finance and administration and with the planning officers

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of other agencies all activities and responsibilities of such agency relating to planning.

(b) The head of the agency shall notify the commissioner of finance and administration in writing of the person initially designated as the planning officer for such agency and of any changes in persons so designated thereafter.

§ 13-5-106.

(a) A state agency strategic plan shall be a statement of the priority directions an agency will take to carry out its mission within the context of any statutory mandates and authorizations given to the agency. The agency strategic plan shall specify those objectives against which will be judged the agency's achievement of its goals.

(b) A state agency strategic plan shall be developed with a two (2) to five (5) year outlook.

(c) All amendments, revisions, or updates to a state agency strategic plan shall be prepared in the same manner as the original and shall be prepared as needed because of changes in the statutory authority and responsibility of the agency.

§ 13-5-107.

(a) Beginning in 2003, the head of the agency shall prepare a strategic plan and shall submit the plan to the commissioner at a time to be prescribed by the commissioner.

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(b) The state agency strategic plan must be developed in a form and manner prescribed in written instructions prepared by the commissioner. The state agency strategic plan must identify any additional legislative authority necessary to implement the provisions of the plan. The agency may only implement those portions of its strategic plan that are consistent with statutory or constitutional authority and for which funding, if needed, is available consistent with the provisions of applicable appropriations acts of the general assembly. State agency strategic plans shall be amended by the agency, as necessary, to ensure consistency with legislative actions prior to implementation of any portion of the plan affected by legislative action.

(c) The commissioner shall review the state agency strategic plan to ensure that it is consistent with the requirements as specified in the commissioner's written instructions. Within sixty (60) days, reviewed plans shall be returned to the agency, together with any required revisions.

(d) The head of each state agency shall, within thirty (30) days of the return of its state agency strategic plan, incorporate all revisions required by the commissioner and return the revised plan to the commissioner.

(e) The commissioner shall transmit copies of each state agency strategic plan to the speakers of the senate and house of representatives

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for referral to the respective finance, ways and means committees and other appropriate standing committees, not later than thirty (30) days prior to the next regular session of the general assembly.

(f) Whenever the governor, in consultation with the commissioner, determines that an emergency or other urgent practical necessity requires that the strategic planning process provided in this part be suspended, the governor may suspend such planning process for a period of one (1) year, provided that the governor gives notice in writing to the chairs of the senate and house finance, ways and means committees at least thirty (30) days prior to such suspension. The written notice shall include a statement of the nature of the emergency or urgent practical necessity.

(g) The state agency strategic plans developed pursuant to this part are not rules and therefore are not subject to the provisions of the Uniform Administrative Procedures Act compiled at title 4, chapter 5.

(4) Tennessee Code Annotated, Section 9-4-5102 is amended by deleting all of the current language of that section and by substituting instead the following:

§ 9-4-5102.

(a) The provisions of this section shall be known and may be cited as the "Tennessee Performance-Based Budgeting Act of 2002".

(b) Beginning with the fiscal year 2003-2004 budget, the agency strategic plan required by title 13, chapter 5, shall provide the strategic

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framework within which an agency budget request is developed for submission to the commissioner of finance and administration.

(c) Beginning with the fiscal year 2003-2004 budget, the budget document shall include performance measures, performance standards, and baseline data for each program included in a state agency's recommended budget; provided, that the commissioner of finance and administration may exempt from the application of this section any programs or agencies the commissioner considers not to be conducive to performance-based budgeting.

(d) Such performance-based budgeting may be implemented in stages, with at least three (3) state agencies to be included in a pilot project in the 2003-2004 and 2004-2005 budget documents, and an additional five (5) agencies in each budget document thereafter until all agencies have implemented performance-based budgeting. The three (3) pilot agencies may include one (1) higher education institution or non-formula unit selected by the commissioner of finance and administration in consultation with the executive director of the Tennessee higher education commission. Other provisions of this section to the contrary notwithstanding, this section shall not apply to the general assembly, the governor's office, or the court system.

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(e) For purposes of this section, the term “program” shall mean a budget unit included in the budget document for which an appropriation is provided in the general appropriations act.

(f) In each budget document, the performance measures, performance standards, and baseline data shall be provided for the current fiscal year, one (1) prior fiscal year, and the one (1) future fiscal year for which funding is recommended. The performance measures, standards, and baseline data shall be quantitative and, to the extent practical, shall be outcome based, in order to indicate the actual impact or public benefit of a program.

(g) Whenever the governor, in consultation with the commissioner of finance and administration, determines that an emergency or other urgent practical necessity requires that the performance-based budget process provided in this section be suspended, the governor may suspend such process for a period of one (1) year, provided that the governor gives notice in writing to the chairs of the senate and house finance, ways and means committees at least thirty (30) days prior to the submission of the next budget document to the general assembly. The written notice shall include a statement of the nature of the emergency or urgent practical necessity.

(h) The provisions of this section are deleted on June 30, 2006, unless otherwise provided by enactment of the general assembly.

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(5)

(a) Tennessee Code Annotated, Section 67-4-1004(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) The rate shall be two and fifteen one-hundredths cents (2.15¢) on each cigarette.

(b) Tennessee Code Annotated, Section 67-4-1004, is amended by adding the following language as a new, appropriately designated subsection:

(c) Increased revenue generated by the 2002 amendment to subdivision (a)(1) shall be deposited in a special account within the general fund and shall be allocated as follows:

- (1) One-fourth (1/4) for public education;
- (2) One-fourth (1/4) for smoking cessation; provided, however, **if**, in any fiscal year, the smoking cessation allocation exceeds eleven million dollars (\$11,000,000), **then** the excess amount shall be paid into the state's general fund;
- (3) One-fourth (1/4) for TennCare or its successor; and
- (4) One-fourth (1/4) for farmer assistance.

This subsection expires on July 1, 2007.

(6) Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following language as a new, appropriately designated section:

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§ 67-4-2019. Notwithstanding any provision of this part or any other law to the contrary, **if** a taxpayer exercises any privilege taxable by this part, **and if** the taxpayer pays any royalty, rent, franchise fee, license fee, management fee, advisor fee, consulting fee or other charge, however designated, for the same or a similar purpose for which such payments are made, **and if** such payment is made to another business entity not exercising any privilege taxable by this part, **and if** such other business entity is organized as a corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability partnership, professional registered limited liability partnership, limited partnership, cooperative, joint-stock association, business trust, regulated investment company, real estate investment trust, state-chartered or national bank, or state-chartered or federally chartered savings and loan association, **and if** such other business entity owns fifty percent (50%) or more of the taxpayer, **then** the taxpayer must include the amount of such payment (*for such royalty, rent, franchise fee, license fee, management fee, advisor fee, consulting fee or other charge*), within the taxpayer's net earnings when determining tax liability pursuant to § 67-4-2007.

(7) Tennessee Code Annotated, Section 67-6-103(f), is amended by deleting the words, figure and symbols "six percent (6%)" and by substituting instead the following:

seven percent (7%)

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(8) Tennessee Code Annotated, Section 67-6-202(a), is amended by deleting the words, figure and symbols "six percent (6%)" and by substituting instead the following:

seven percent (7%)

(9) Tennessee Code Annotated, Section 67-6-203(a), is amended by deleting the words, figure and symbols "six percent (6%)" and by substituting instead the following:

seven percent (7%)

(10) Tennessee Code Annotated, Sections 67-6-204(a) and (c), are amended by deleting the words, figure and symbols "six percent (6%)" and by substituting instead the following:

seven percent (7%)

(11) Tennessee Code Annotated, Section 67-6-205(a), is amended by deleting the words, figure and symbols "six percent (6%)" and by substituting instead the following:

seven percent (7%)

(12) Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following language as a new, appropriately designated section:

§ 67-6-228.

(a)

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(1) Notwithstanding any provision of this chapter to the contrary, except as otherwise provided in subdivision (2), the retail sale of food and food ingredients for human consumption shall be taxed at the rate of four percent (4%) through June 30, 2003, and thereafter shall be taxed at the rate of two percent (2%); provided, however, **if** the rate set forth in § 67-6-202 is increased through passage of any act occurring subsequent to enactment of this public chapter, **then** the retail sale of food and food ingredients shall automatically be taxed at one-half (1/2) such increased rate.

(2) The retail sale of the following food and food ingredients shall be taxed at the rate levied by § 67-6-202:

(A) Candy;

(B) Dietary supplements; and

(C) Prepared food.

(3) For purposes of this section:

(A) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

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(B) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one (1) or more of the following dietary ingredients:

(a) A vitamin;

(b) A mineral;

(c) An herb or other botanical;

(d) An amino acid;

(e) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(f) A concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts"

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box found on the label and as required pursuant to
21 C.F.R. §101.36.

(C) "Prepared food" means:

(i) Food sold in a heated state or heated by
the seller;

(ii) Two (2) or more food ingredients mixed
or combined by the seller for sale as a single item;
or

(iii) Food sold with eating utensils provided
by the seller, including plates, knives, forks,
spoons, glasses, cups, napkins, or straws.

"Prepared food" does not include:

(a) Food that is only sliced,
repackaged, or pasteurized by the seller; or

(b) Soft drinks.

(b) Except as otherwise provided in this section, "food and food
ingredients" means substances, whether in liquid, concentrated, solid,
frozen, dried, or dehydrated form, that are sold for ingestion or chewing
by humans and are consumed for their taste or nutritional value.

(c) As used in this section, "food and food ingredients" does not
include:

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(1) Alcoholic beverages, which shall mean and include all beverages, suitable for human consumption, that contain one-half (1/2) of one (1) per cent or more of alcohol by volume and are regulated pursuant to the provisions of Title 57, Chapters 3, 4 or 5; or

(2) Tobacco products, which shall mean and include cigarettes, cigars, chewing or pipe tobacco, or any other item containing tobacco.

(13) Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following language as a new, appropriately designated section:

§ 67-6-229.

(a)

(1) Notwithstanding any provision of this chapter to the contrary, except as otherwise provided in subdivision (2), the retail sale of clothing and protective equipment shall be taxed at the rate of four percent (4%) through June 30, 2003, and thereafter shall be taxed at the rate of two percent (2%); provided, however, **if** the rate set forth in § 67-6-202 is increased through passage of any act occurring subsequent to enactment of this public chapter, **then** the retail sale of clothing and protective equipment shall automatically be taxed at one-half (1/2) such increased rate.

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(2) The retail sale of clothing accessories or equipment and sport or recreational equipment shall be taxed at the rate levied by § 67-6-202.

(b) For purposes of this section, "clothing" shall mean all human wearing apparel suitable for human use including, but not limited to:

- (1) Aprons, household and shop;
- (2) Athletic supporters;
- (3) Baby receiving blankets;
- (4) Bathing suits and caps;
- (5) Beach capes and coats;
- (6) Belts and suspenders;
- (7) Boots;
- (8) Coats and jackets;
- (9) Costumes;
- (10) Diapers (children and adults - including disposables);
- (11) Ear muffs;
- (12) Footlets;
- (13) Formal wear;
- (14) Garters and garter belts;
- (15) Girdles;
- (16) Gloves and mittens for general use;
- (17) Hats and caps;

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- (18) Hosiery;
- (19) Insoles for shoes;
- (20) Lab coats;
- (21) Neckties;
- (22) Overshoes;
- (23) Pantyhose;
- (24) Rainwear;
- (25) Rubber pants;
- (26) Sandals;
- (27) Scarves;
- (28) Shoes and shoe laces;
- (29) Slippers;
- (30) Sneakers;
- (31) Socks and stockings;
- (32) Steel-toed shoes;
- (33) Underwear;
- (34) Uniforms, athletic and non-athletic; and
- (35) Wedding apparel.

(c) For purposes of this section, clothing shall not include:

- (1) Belt buckles sold separately;
- (2) Costume masks sold separately;
- (3) Patches and emblems sold separately;

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(4) Sewing equipment and supplies (knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, thimbles); or

(5) Sewing materials that become part of clothing (buttons, fabric, lace, thread, yarn, and zippers).

(d) For purposes of this section, the following definitions are mutually exclusive of clothing and each other:

(1) "Clothing accessories or equipment" shall mean incidental items worn on the person or in conjunction with clothing. The following list is intended to be a list of examples and not an all-inclusive list of possibilities. Clothing accessories shall include:

(A) Briefcases;

(B) Cosmetics;

(C) Hair notions, including barrettes, hair bows, hair nets, etc.;

(D) Handbags;

(E) Handkerchiefs;

(F) Jewelry;

(G) Sun glasses, non-prescription;

(H) Umbrellas;

(I) Wallets;

(J) Watches; and

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(K) Wigs and hair pieces.

(2) "Sport or recreational equipment" shall mean items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. The following list is intended to be a list of examples and not an all-inclusive list of possibilities. Sport or recreational equipment shall include:

(A) Ballet and tap shoes;

(B) Cleated or spiked athletic shoes;

(C) Gloves (baseball, bowling, boxing, hockey, golf, etc.);

(D) Goggles;

(E) Hand and elbow guards;

(F) Life preservers and vests;

(G) Mouth guards;

(H) Roller and ice-skates;

(I) Shin guards;

(J) Shoulder pads;

(K) Ski boots;

(L) Waders; and

(M) Wetsuits and fins.

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(3) "Protective equipment" shall mean items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. The following list is intended to be a list of examples and not an all-inclusive list of possibilities. Protective equipment shall include:

- (A) Breathing masks;
- (B) Clean room apparel and equipment;
- (C) Ear and hearing protectors;
- (D) Face shields;
- (E) Finger guards;
- (F) Hard hats;
- (G) Helmets;
- (H) Paint or dust respirators;
- (I) Protective gloves;
- (J) Safety glasses and goggles;
- (K) Safety belts;
- (L) Tool belts; and
- (M) Welders gloves and masks.

(14) Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following language as a new, appropriately designated section:

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§ 67-6-230.

(a)

(1) Notwithstanding any provision of this chapter to the contrary, the retail sale of non-prescription drugs shall be taxed at the rate of four percent (4%) through June 30, 2003, and thereafter shall be taxed at the rate of two percent (2%); provided, however, **if** the rate set forth in § 67-6-202 is increased through passage of any act occurring subsequent to enactment of this public chapter, **then** the retail sale of non-prescription drugs shall automatically be taxed at one-half (1/2) such increased rate.

(2) The retail sale of dietary supplements, as defined in § 67-6-228(a)(3)(B), shall be taxed at the rate levied by § 67-6-202.

(b) For purposes of this section, "non-prescription drugs" shall mean non-narcotic medicines or drugs that may be sold without a prescription and are prepackaged and labeled for use in accordance with the United States food, drug and cosmetic act and the laws of Tennessee, other than legend drugs as defined in § 53-10-101. "Non-prescription drugs" does not include dietary aids, supplements, natural or herbal remedies, or health foods, notwithstanding any claim to medicinal value that such aids, supplements, remedies or foods may make.

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(15) Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following language as a new, appropriately designated section:

§ 67-6-232.

(a)

(1) Notwithstanding any other provision of this public chapter or any other law to the contrary, the existence and rate of any tax imposed under Title 67, Chapter 6, Part 2, as of June 30, 2002, shall remain undiminished by the provisions of this public chapter to the extent that such taxes are to be distributed pursuant to § 67-6-103(d) under a financing arrangement in effect as of June 30, 2002; provided, however, **if** the rate of any such tax rises on or after July 1, 2002, **then** those revenue collections that are attributable to such rate increase shall be paid into the state's general fund.

(2) Notwithstanding any other provision of this public chapter or any other law to the contrary, the existence and rate of any tax imposed under Title 67, Chapter 6, Part 7, as of June 30, 2002, shall remain undiminished by the provisions of this public chapter to the extent that such taxes are to be distributed pursuant to § 67-6-103(d) under a financing arrangement in effect as of June 30, 2002; provided, however, **if** the rate of any such tax rises on or after July 1, 2002, **then** those revenue collections that are

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attributable to such rate increase shall be paid into the general fund of the municipality.

(b)

(1) Notwithstanding any other provision of this public chapter or any other law to the contrary, the existence and rate of any tax imposed under Title 67, Chapter 6, Part 2, as of June 30, 2002, shall remain undiminished by the provisions of this public chapter to the extent that such taxes are to be distributed pursuant to § 7-88-106 under a financing arrangement in effect as of June 30, 2002; provided, however, **if** the rate of any such tax rises on or after July 1, 2002, **then** those revenue collections that are attributable to such rate increase shall be paid into the state's general fund.

(2) Notwithstanding any other provision of this public chapter or any other law to the contrary, the existence and rate of any tax imposed under Title 67, Chapter 6, Part 7, as of June 30, 2002, shall remain undiminished by the provisions of this public chapter to the extent that such taxes are to be distributed pursuant to § 7-88-106 under a financing arrangement in effect as of June 30, 2002; provided, however, **if** the rate of any such tax rises on or after July 1, 2002, **then** those revenue collections that are

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attributable to such rate increase shall be paid into the general
fund of the municipality, as defined in § 7-88-103(5).

(16)

(a) Tennessee Code Annotated, Section 67-6-103(d), is amended by
adding the following language as a new, appropriately designated subdivision:

(3) Distribution of state and local sales and use tax revenues
pursuant to this subsection are subject to the provisions of § 67-6-232(a).

(b) Tennessee Code Annotated, Section 7-88-106, is amended by adding
the following language as a new, appropriately designated subsection:

(3) Distribution of state and local sales and use tax revenues
pursuant to this section are subject to the provisions of § 67-6-232(b).

(17) Tennessee Code Annotated, Section 9-4-211, is amended by adding the
following language as a new, appropriately designated subsection:

(e) Notwithstanding any provision of this public chapter or any other law
to the contrary, from increased revenues generated by the provisions of this
public chapter there shall be allocated a sum sufficient to restore the reserve for
revenue fluctuations account to a level of not less than two hundred million
dollars (\$200,000,000) for fiscal year 2002-2003.

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(a) In order to ascertain the will of the people with respect to whether or not a limited constitutional convention should be called, there shall be submitted to the people of the state at the regular general election to be held on Tuesday, November 5, 2002, under the general election laws of the state in the several counties, the following question, which shall be printed in full on each ballot or voting machine, in words and figures substantially as follows:

"Question: Shall a limited convention be held to alter Article II, Section 28, of the present Constitution of the State of Tennessee, relative to taxation and expenditures, [*If the convention is held, **then** implementation of the Tennessee Flat Tax Law will be suspended indefinitely, **and** sales tax will be temporarily extended to most goods and services not currently subject to sales tax*]?"

_____FOR THE CONVENTION

_____AGAINST THE CONVENTION

Voters will indicate their choice by placing a cross mark (x) opposite one or the other of the above expressions."

(b) The proper officers in all counties shall immediately after the election make a return to the secretary of state of the number of votes cast in their respective counties "For the Convention" and the number of votes cast "Against the Convention", and after comparison of the returns by the secretary of state

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and the attorney general and reporter, the governor shall, by proclamation, announce the results.

(c) If the people approve the question and thereby authorize the convention, then delegates shall be elected at the regular general election to be held on Thursday, August 5, 2004, under the general election laws of the state in the several counties. There shall be thirty-three (33) delegates, with one delegate to be elected by the qualified voters of each state senate district from which members are elected to the senate of the Tennessee general assembly.

(d) Any person who is at least twenty-one (21) years of age, a citizen of the United States, and a citizen of Tennessee for three (3) years and a resident of the district for at least one year may become a candidate for delegate to the convention upon filing with the county election commission of the county of residence a nominating petition containing not less than twenty-five (25) names of legally qualified voters of the district. In the case of a candidate from a state senatorial district comprising more than one county, only one qualifying petition need be filed by the candidate, and that in the candidate's home county, with a certified copy thereof filed with the election commission of each of the other counties in the state senatorial district.

Notwithstanding any provision of law to the contrary, every person desiring to become a delegate to the convention shall qualify by filing a qualifying petition or petitions by 12:00 o'clock noon, prevailing time, on Wednesday, March 31, 2004. The names of candidates for the delegates to the convention shall be

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placed on the official ballot alphabetically without reference to political affiliation.
Each voter shall cast a ballot for one delegate from the voter's senatorial district.
The candidate from each state senatorial district who receives the greatest number of votes shall be the delegate from the senatorial district.

The returns from the various counties shall be certified to the secretary of state and canvassed by the secretary of state, the governor and the attorney general and reporter in the same manner and form as the returns are required to be certified from the election in which the people vote for and against the call of the convention, as provided in subsection (a), and the governor shall, by proclamation, announce the names of those elected as delegates to the convention. Delegates to the convention, elected and certified, shall receive a certificate of election signed by the governor and attested by the secretary of state under the great seal of the state.

(e) The delegates elected to the convention shall assemble in the chamber of the senate at Nashville at 12:00 o'clock noon on Tuesday, September 7, 2004, and organize by electing one of their members as president, another as secretary, and by electing such other officers as they consider necessary. If a majority of the delegates are not present on that date, then those present shall adjourn from day to day until a majority appears, when the convention shall be organized. The convention when organized may adopt its own rules of procedure and employ such clerks, stenographers, reporters,

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sergeants-at-arms, and other assistants as the convention considers necessary and fix the amount of their compensation.

The compensation of the delegates to the convention shall be a per diem allowance and mileage allowance in such amounts as may prevail, during the time the convention meets, for members of the general assembly, which shall be paid by the state in the same manner that members of the general assembly are paid, upon certification by the president and secretary of the convention. In case there shall be a vacancy in the membership of the convention, it shall be filled by election of the legislative body of the county of residence of the delegate whose seat becomes vacant.

(f) It is the duty of the secretary of state to make publication in at least one general circulation newspaper published in each county of the fact that a constitutional convention election is to be held in the state on Tuesday, November 5, 2002. Any county not having a general circulation newspaper shall be considered to have been notified by publication in the newspaper published in counties immediately adjacent thereto. The secretary of state shall also certify to the various election commissioners of the different counties the form for the ballot with reference to the constitutional convention election agreeable to the terms of this section and furnish the election commissioners with any other printed information pertaining to the election that is material or necessary. If the people vote in favor of the convention, then it is the duty of the secretary of state to issue a call for the election of delegates to the convention. The election shall be held

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in the various counties on Thursday, August 5, 2004, and the secretary of state shall certify to the various county election commissioners the form of the ballot to be used in the election of delegates as provided subsection (d). All ballots used in the 2002 regular November election shall include the above question as to holding the limited constitutional convention, and the ballots used in the 2004 regular August election shall include the names of the candidates for delegates to such convention, if such convention is approved.

(g) The final action of the convention with respect to the alteration of Article II, Section 28 of the Constitution of the State of Tennessee, relative to taxation and expenditures, shall be duly certified by the president and the secretary of the convention and the original certified copy shall be transmitted to the secretary of state.

(h) Any amendment to Article II, Section 28 of the Constitution of the State of Tennessee, relative to taxation and expenditures, adopted by the convention shall be submitted to the voters of the state for ratification or rejection at an election to be held in such manner and on such date after the final adjournment of the convention as may be fixed and determined by the convention. The official ballot to be used in any such election shall be arranged so that the voter can vote separately for the ratification or rejection of each and every amendment. Any election so held shall be held under the general election laws of the state. When the election to ratify or reject any amendment to the constitution has been held, the various county election commissioners shall

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certify the results thereof in each county to the secretary of state, who, together with the governor and attorney general, shall canvass the returns and the governor shall issue a proclamation showing the results of the election on the ratification or rejection of the amendments. All amendments ratified and approved in the election held for that purpose shall be proclaimed by the governor as a part of the constitution of the state and such proclamation shall be filed in the office of the secretary of state.

(i) All expenses in connection with the holding of any of the elections authorized by this section shall be paid by the commissioner of finance and administration on warrant drawn upon the treasurer upon certification by the secretary of state to the correctness of each account. No compensation shall be paid by the state to the various county election commissioners for their services or for rental space or quarters in the various counties for places for holding any elections herein authorized.

(j) Notwithstanding any provision of law to the contrary:

(1) Every person acting as a lobbyist at the constitutional convention shall be subject to the provisions of Tennessee Code Annotated, Title 3, Chapter 6, as if the convention constitutes an annual session of the general assembly;

(2) Every person serving as a delegate to or an employee of the constitutional convention shall be subject to the provisions of Tennessee Code Annotated, Title 2, Chapter 10, Part 1, as if the convention

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constitutes an annual session of the general assembly and such person is serving as a member or employee of the general assembly; and

(3) Every person serving as a delegate to or an employee of the constitutional convention (as well as such person's immediate family), shall be subject to the provisions of Tennessee Code Annotated, Section 3-6-108, as if the convention constitutes an annual session of the general assembly and such person is serving as a member or employee of the general assembly.

SECTION 2. Effective January 1, 2003:

(1) Tennessee Code Annotated, Title 67, Chapter 6, is amended by deleting Part 7 in its entirety and by substituting instead the following:

§ 67-6-701. Notwithstanding any provision of law to the contrary, subject to the limitations set forth in § 67-6-702, a sum shall be earmarked and allocated for counties and municipalities.

§ 67-6-702.

(a)

(1) The aggregate amount collected by all counties and municipalities under Title 67, Chapter 6, Part 7 in the fiscal year

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ending June 30, 2002, times a factor of 1.04 shall constitute the
"aggregate local option sales tax base amount."

(2)

(A) The individual amount collected by each county or municipality under Title 67, Chapter 6, Part 7 in the fiscal year ending June 30, 2002 times a factor of 1.04 shall constitute the "individual local government local option sales tax base amount" for that county or municipality. In determining the individual local government local option sales tax base amount, the commissioner shall annualize any amounts collected pursuant to an increase in the local option rate that has been in effect less than twelve (12) months as of June 30, 2002.

(B) The individual local government local option sales tax base amount for any county or municipality that did not collect any amounts under Title 67, Chapter 6, Part 7 in the fiscal year ending June 30, 2002, shall be zero (0).

(b) In the month beginning March 1, 2003, and continuing monthly thereafter, the commissioner shall distribute to each county and municipality from the general fund an amount equal to one-twelfth (1/12) of its individual local option sales tax base amount.

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(c) For fiscal years beginning on or after July 1, 2004, the commissioner shall adjust the individual local option sales tax base amount and distributions in order to approximately reflect the rate of growth or decline in sales tax collections occurring within the county or municipality during the preceding fiscal year; provided, however, the adjustment of the individual local option sales tax base shall be restricted to the approximate rate of growth or decline in the sale of goods and services that comprised the local option sales tax base as of June 30, 2002.

§ 67-6-703. One-half (1/2) of the proceeds distributed to counties and municipalities under this part shall be expended and distributed in the same manner as the county property tax for school purposes is expended and distributed.

§ 67-6-704. A county and municipality may, by contract, provide for an alternative distribution for the amount not distributed under § 67-6-703. It is the legislative intent that this act shall not alter the economic effect of any such agreements in effect as of the effective date of this section.

§ 67-6-705. The provisions of this part shall not be construed or implemented to remove any tax liability arising prior to January 1, 2003, or any penalties or interest assessed for the failure to timely pay or transmit such tax.

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(a) Tennessee Code Annotated, Title 67, Chapter 2, is amended by deleting Part 1 in its entirety; provided, however, the provisions of this section shall not be construed or implemented to remove any tax liability arising prior to January 1, 2003, or any penalties or interest assessed for the failure to timely pay such tax.

(b)

(1) Notwithstanding any provision of law to the contrary, subject to the limitations in the formula provided in subdivision (2) of this subsection, a sum shall be earmarked and allocated for counties and municipalities.

(2)

(1) The average of the individual amounts received by each county or municipality under Title 67, Chapter 2, Part 1 in the fiscal years ending June 30, 2001, and June 30, 2002 shall constitute the "individual local government Hall tax base amount" for that county or municipality.

(2) The individual local government Hall tax base amount for any county or municipality that did not collect any amounts under Title 67, Chapter 2, Part 1 in the fiscal years ending June 30, 2001, or June 30, 2002, shall be zero (0).

(3) In fiscal years 2002-2003 and 2003-2004, each local government shall receive its individual local government Hall tax base amount adjusted by the percentage change in distributions received by

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such government between fiscal years 2000-2001 and 2001-2002, which amounts shall be distributed on or before July 31 immediately following the close of the fiscal year.

(4) In each fiscal year beginning with fiscal year 2004-2005, each local government shall receive its individual local government Hall tax base amount adjusted by the percentage change in collections under the flat tax levied in Title 67, Chapter 2, Part 2 in the immediately preceding fiscal year over the prior year, which amounts shall be distributed on or before July 31 immediately following the close of that year.

(3)

(a) Tennessee Code Annotated, Title 67, Chapter 2, is amended by adding the following language as a new, appropriately designated part:

§ 67-2-201. The title of this part is, and may be cited as, the "Tennessee Flat Tax Law."

§ 67-2-202.

(a) As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of revenue or the commissioner's designee.

(2) "Department" means the department of revenue.

(3) "Estimated tax" means the amount that the taxpayer estimates to be the taxpayer's income tax under this part for the

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taxable year less the amount which the taxpayer estimates to be the sum of any credits allowable for tax withheld.

(4) "Individual" means a natural person.

(5) "Internal Revenue Code" means Title 26 of the United States Code as effective during the year in which the tax under this part is determined.

(6) "Nonresident individual" means any natural person who is not a resident of this state for any portion of the taxable year.

(7) "Nonresident trust or estate" means any trust or estate other than a resident trust or estate or a part-year resident trust.

(8) "Partner" means a partner as defined in § 7701(a)(2) of the Internal Revenue Code and the regulations adopted thereunder, as from time to time amended. With respect to any reference in this part, or in rules adopted under this part, to pass-through entities, "partner" shall include a member of a limited liability company that is treated as a partnership for federal income tax purposes, and includes any person who owns, directly or indirectly through one or more pass-through entities, an interest in another pass-through entity.

(9) "Partnership" means a partnership as defined in § 7701(a)(2) of the Internal Revenue Code and the regulations adopted thereunder, as from time to time amended, and any

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reference in this part, or in rules adopted under this part, to a partnership shall include a limited liability company that is treated as a partnership for federal income tax purposes.

(10) "Part-year resident individual" means any natural person who is not either a resident of this state for the entire taxable year or a nonresident of this state for the entire taxable year.

(11) "Part-year resident trust" means any trust that is not either a resident trust or a nonresident trust for the entire taxable year.

(12) "Pass-through entity" means any partnership of any kind whatsoever, any limited liability company or other entity treated as a partnership for purposes of federal income taxation, and any S corporation.

(13) "Person" means any natural person, association, corporation, partnership, limited liability company, trust, estate, and any other entity of any kind whatsoever.

(14) "Resident individual" means any natural person who is domiciled in this state at any time during the taxable year or who resides in this state during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual other than a member of the

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armed forces of the United States, who is present in this state for more than one hundred eighty-three (183) days during the taxable year, is presumed to be a resident, but the absence of an individual from this state for more than one hundred eighty-three (183) days raises no presumption that the individual is not a resident. A resident who removes from the state during a taxable year is considered a resident until he or she has both established a definite domicile elsewhere and abandoned any domicile in this state.

(15) "Resident trust or estate" means:

(A) The estate of a decedent who at the time of death was a resident of this state;

(B) The estate of a person who, at the time of commencement of a case under Title 11 of the United States Code, was a resident of this state;

(C) A trust, or a portion of a trust, consisting of property transferred by will of a decedent who at the time of death was a resident of this state; and

(D) A trust, or a portion of a trust, consisting of the property of:

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(i) A person who was a resident of this state at the time the property was transferred to the trust if the trust was then irrevocable;

(ii) A person who, if the trust was revocable at the time the property was transferred to the trust, and has not subsequently become irrevocable, was a resident of this state at the time the property was transferred to the trust; or

(iii) A person who, if the trust was revocable when the property was transferred to the trust but the trust has subsequently become irrevocable, was a resident of this state at the time the trust became irrevocable.

(16) "S corporation" means any corporation that is an S corporation for federal income tax purposes.

(17) "Taxable year" means the year defined in § 67-2-205.

(18) "Taxpayer" means any person, trust or estate subject to the tax levied by this part, including any pass-through entity referenced in § 67-2-215.

(19) "Trust" means an arrangement that is ordinarily created either by a will or by an inter vivos declaration whereby a trustee or trustees take title to property for the purpose of

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protecting or conserving it for beneficiaries and that, under 26 C.F.R. § 301.7701-4, is classified and treated as a trust (and not as an association, under 26 C.F.R. § 301.7701-2, or partnership, under 26 C.F.R. § 301.7701-3) for federal income tax purposes. "Trust" does not include any real estate mortgage investment conduit, as defined in § 860D of the Internal Revenue Code, that is created as a trust, or any other entity described in § 67-4-2008(a)(9).

(b) Any term used in this part shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes unless a different meaning is provided or clearly required.

§ 67-2-203.

(a) The tax levied by this part is declared to be a tax on one (1) or more of the following:

(1) The privileges of engaging in a business, profession, occupation, trade, employment, enterprise, or endeavor; of investing or depositing money or capital; of selling one's labor or property; of engaging in a lease or rental; of benefiting from a pension, trust, annuity, or similar account; of receiving income or earnings; of applying one's talents, skills, time, efforts, resources,

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or property for personal gain or advantage; or of enjoying the
protections and benefits provided by government;

(2) Income as a species of intangible personal property; or

(3) Income.

Provided, however, if any of the categories or subcategories contained in
this subsection are determined by a court of competent jurisdiction to be
beyond the authority of the general assembly to levy taxes on such
categories or subcategories, then the tax levied by this part shall not be
deemed to be a tax on the categories or subcategories determined to be
invalid.

(b) Engaging in any of the privileges enumerated in subsection
(a)(1) that produce income that is used to measure the tax levied by this
part without paying the tax in accordance with the provisions of this part
subjects the offender to the sanctions set forth in § 67-2-220(a).

(c) The tax levied by this part is for state purposes only, and no
county or municipality shall have power to levy any like tax.

§ 67-2-204.

(a)

(1) Except as otherwise provided in subdivisions (2) and
(3), for tax years beginning on or after January 1, 2003, there is
hereby levied on each resident single individual, resident married
individual filing separately, resident husband and wife filing jointly,

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resident estate, and resident trust, a flat tax at the rate of three and one-fourth percent (3.25%) per annum of Tennessee adjusted gross income in excess of one hundred percent (100%) of federal poverty guidelines (as promulgated by the U.S. Department of Health and Human Services, or its successor agency), for a family unit consisting of the taxpayer and the taxpayer's dependents.

(2) The return filing and withholding requirements of this part shall not apply, and no tax shall be levied, unless the taxpayer's Tennessee adjusted gross income exceeds one hundred percent (100%) of federal poverty guidelines (as promulgated by the U. S. Department of Health and Human Services, or its successor agency), for a family unit consisting of the taxpayer and the taxpayer's dependents.

(b) There is hereby levied on each nonresident individual of this state a tax equal to the product of an amount equal to the tax computed as if such nonresident were a resident, multiplied by a fraction, the numerator of which is the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state and the denominator of which is the nonresident's Tennessee adjusted gross income; provided, if the nonresident's Tennessee adjusted gross income is less than the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state, then the nonresident's

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Tennessee adjusted gross income derived from or connected with sources within this state shall be applied to the rate specified in subsection (a) for the purposes of determining the tax pursuant to this section. The provisions of this subsection shall also apply to nonresident trusts and estates, and wherever reference is made in this subsection to nonresidents of this state, such reference shall be construed to include nonresident trusts and estates; provided any reference to a nonresident's Tennessee adjusted gross income derived from sources within this state or to a nonresident's Tennessee adjusted gross income shall be construed, in the case of a nonresident trust or estate, to mean the nonresident trust or estate's Tennessee adjusted gross income derived from sources within this state and the nonresident trust or estate's Tennessee adjusted gross income, respectively.

(c) There is hereby levied on the Tennessee adjusted gross income of each part-year resident individual, derived from or connected with sources within this state, a tax which shall be a product equal to the tax computed as if such part-year resident were a resident, multiplied by a fraction, the numerator of which is the part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, as described in § 67-2-209, and the denominator of which is the part-year resident's Tennessee adjusted gross income; provided, if the part-year resident's Tennessee adjusted gross income is less than such

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part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, then such part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state shall be applied to the rate specified in subsection (a) for purposes of determining the tax pursuant to this section. The provisions of this subsection shall apply to part-year resident trusts, and wherever reference is made in this subsection to part-year residents, such reference shall be construed to include part-year resident trusts; provided, any reference to a part-year resident's Tennessee adjusted gross income derived from sources within this state or a part-year resident's Tennessee adjusted gross income shall be construed, in the case of a part-year resident trust, to mean the part-year resident trust's Tennessee adjusted gross income derived from sources within this state and the part-year resident trust's Tennessee adjusted gross income, respectively.

(d) Any person exempt from federal income tax by reason of its purposes or activities shall be exempt from tax levied by this part, but such person is not exempt from the reporting and withholding requirements imposed by this part.

§ 67-2-205.

(a) For purposes of the tax levied by this part, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income

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tax purposes, and a taxpayer's method of accounting shall be the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, Tennessee adjusted gross income shall be computed under such method that in the opinion of the commissioner fairly reflects income.

(b) If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of the tax under this part shall be similarly changed. If a taxpayer's method of accounting is changed for federal income tax purposes, the method of accounting for purposes of this part shall similarly be changed.

(c) In computing a taxpayer's Tennessee adjusted gross income for any taxable year under a method of accounting different from the method under which the taxpayer's Tennessee adjusted gross income for the previous year was computed, there shall be taken into account those adjustments that are determined, under rules adopted by the commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

(d) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax that results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the

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preceding taxable years, not in excess of two (2) years, during which the taxpayer used the method of accounting from which the change is made.

If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year that is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments.

§ 67-2-206.

(a) For purposes of this part, "Tennessee adjusted gross income" of a natural person (resident, nonresident, and part-year resident individual) is defined as the person's federal adjusted gross income, adjusted as provided in this section. Except as provided in § 67-2-229, filing status must be the same as the federal income tax filing status for the same taxable year.

(b) There shall be added to federal adjusted gross income the following amounts:

(1) To the extent not properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of any state, political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity, exclusive of such income from obligations

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issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, and exclusive of any such income with respect to which taxation by any state is prohibited by federal law;

(2) To the extent included in gross income for federal income tax purposes for the taxable year, the total taxable amount of a lump sum distribution for the taxable year deductible from such gross income in calculating federal adjusted gross income; and

(3) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any loss from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, in the income year such loss was recognized; provided that this subdivision (3) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income.

(c) There shall be subtracted from federal adjusted gross income the following amounts:

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(1) To the extent properly includable in gross income for federal income tax purposes, any income with respect to which taxation by any state is prohibited by federal law;

(2) The amount of any refund or credit for overpayment of taxes measured by income levied by this state, or any other state of the United States or the District of Columbia, to the extent properly includable in gross income for federal income tax purposes;

(3) To the extent properly includable in gross income for federal income tax purposes, any railroad retirement benefits with respect to which taxation by any state is prohibited by federal law;

(4) To the extent properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee; and

(5) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any gain from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or

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local authority, district or similar public entity created under the laws of the state of Tennessee, in the income year such gain was recognized; provided that this subdivision (5) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income.

§ 67-2-207.

(a) The income of a nonresident individual derived from or connected with sources within this state shall be the sum of the net amount of items of income, gain, loss and deduction entering into the taxpayer's Tennessee adjusted gross income which are derived from or connected with sources within this state, including, but not limited to:

(1) Compensation paid to the taxpayer as an employee, independent contractor, or otherwise, for personal services performed in this state;

(2) Income from a business, trade or profession carried on in this state;

(3) The taxpayer's distributive share of partnership income, gain, loss and deduction, determined under § 67-2-212;

(4) The taxpayer's pro rata share of S corporation income, gain, loss and deduction, determined under § 67-2-212; and

(5) The taxpayer's share of estate or trust income, gain, loss and deduction, determined under § 67-2-213.

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(b) If a husband and wife determine their federal income tax on a joint return but determine their Tennessee income taxes separately, they shall determine their incomes derived from or connected with sources within this state separately as if their federal adjusted gross incomes had been determined separately.

(c) For purposes of this section, "derived from or connected with sources within this state" is defined as such term is defined in § 67-2-210.
§ 67-2-208.

(a) Tennessee adjusted gross income of a resident trust or estate shall mean the taxable income of the fiduciary of such trust or estate as determined for purposes of the federal income tax, to which there shall be added or subtracted, as the case may be, the share of the trust or estate in the Tennessee fiduciary adjustment, as defined in subsection (c).

(b) If any trust or portion of a trust, other than a trust created by the will of a decedent, has one (1) or more nonresident noncontingent beneficiaries, the Tennessee adjusted gross income of the trust shall be modified as follows:

The Tennessee adjusted gross income of the trust shall be the sum of:

(1) All such income derived from or connected with sources within this state; and

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(2) That portion of such income derived from or connected with all other sources, which is derived by applying to all such income derived from or connected with all other sources a fraction, the numerator of which is the number of resident noncontingent beneficiaries, and the denominator of which is the total number of noncontingent beneficiaries.

(c) "Tennessee fiduciary adjustment" means the net positive or negative total of the following items relating to income, gain, loss or deduction of a trust or estate:

(1) There shall be added together:

(A) Any interest income from obligations issued by or on behalf of any state, political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity, exclusive of such income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee and exclusive of any such income with respect to which taxation by any state is prohibited by federal law;

(B) To the extent properly includable in determining the net gain or loss from the sale or other disposition of

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capital assets for federal income tax purposes, any loss from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee, in the income year such loss was recognized; provided that this item (B) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(C) To the extent deductible in determining federal taxable income prior to deductions relating to distributions to beneficiaries, any interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this part.

(2) There shall be subtracted from the sum of such items:

(A) To the extent properly includable in gross income for federal income tax purposes, any income with respect to which taxation by any state is prohibited by federal law;

(B) To the extent properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of the state

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of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee;

(C) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any gain from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee, in the income year such gain was recognized; provided that this item (C) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(D) The amount of any refund or credit for overpayment of income taxes levied by this state, to the extent properly includable in gross income for federal income tax purposes for the taxable year and to the extent deductible in determining federal taxable income prior to deductions relating to distributions to beneficiaries for the preceding taxable year.

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(d)

(1) The respective shares of a trust or estate and its beneficiaries, including, solely for the purpose of this allocation, nonresident beneficiaries, in the Tennessee fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the trust or estate.

(2) If the trust or estate has no federal distributable net income for the taxable year, then the share of each beneficiary in the Tennessee fiduciary adjustment shall be in proportion to the beneficiary's share of the trust or estate income for such year, determined under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the Tennessee fiduciary adjustment shall be allocated to the trust or estate.

(3) The commissioner may by rule establish such other method or methods of determining to whom the items comprising the fiduciary adjustment shall be attributed as may be appropriate and equitable. Such other method may be used by the fiduciary whenever the allocation of the fiduciary adjustment pursuant to subdivisions (1) and (2) would result in an inequity that is substantial both in amount and in relation to the amount of the fiduciary adjustment.

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(e) For purposes of this section, “derived from or connected with sources within this state” is defined as such term is defined in § 67-2-210.

§ 67-2-209.

(a) For purposes of this part, the income derived from or connected with sources within this state of a part-year resident individual shall be the sum of the following:

(1) Tennessee adjusted gross income for the period of residence, computed as if the taxpayer’s taxable year for Tennessee income tax purposes were limited to the period of residence; and

(2) The income derived from or connected with sources within this state determined in accordance with § 67-2-207 for the period of nonresidence as if the taxpayer’s taxable year for Tennessee income tax purposes were limited to the period of nonresidence.

(b) For purposes of this part, the income derived from or connected with sources within this state of a part-year resident trust shall be the sum of the following:

(1) The share of Tennessee adjusted gross income for the period of residence, determined as if such trust were an individual whose taxable year for federal income tax purposes were limited

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to the period of residence, allocated to the trust in accordance with the methods of allocation set forth in § 67-2-208; and

(2) The income derived from or connected with sources within this state for the period of nonresidence determined in accordance with § 67-2-213 as if its taxable year for federal income tax purposes were limited to the period of nonresidence.

(c) For purposes of this section, “derived from or connected with sources within this state” is defined as such term is defined in § 67-2-210.

§ 67-2-210.

(a) For purposes of this part, except as may be otherwise provided in this part, the term “derived from or connected with sources within this state” is defined in this section.

(b) Items of income, gain, loss and deduction derived from or connected with sources within this state shall be those items attributable to:

(1) The ownership or disposition of any interest in real, tangible or intangible personal property in this state;

(2) A business, trade, profession or occupation carried on in this state; and

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(3) In the case of a shareholder of an S corporation, the ownership of shares issued by such corporation, to the extent determined under § 67-2-212.

(4) In the case of a partner, the ownership interest in the partnership, to the extent determined under § 67-2-212.

(c) Items of income, gain, loss and deduction derived from or connected with Tennessee sources do not include such items attributable to intangible personal property of a nonresident individual, including annuities, dividends, interest, and gains and losses from the disposition of intangible personal property, except to the extent attributable to property employed in a business, trade, profession or occupation carried on in Tennessee.

(1) Intangible personal property is employed in a business, trade, profession or occupation carried on in this state if such property's possession and control have been localized in connection with a business, trade, profession or occupation in Tennessee, so that the property's substantial use and value attach to and become an asset of such business, trade, profession or occupation.

(2) If intangible personal property of a nonresident is employed in a business, trade, profession or occupation carried on in Tennessee, the entire income from such property, including

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gains from its sale, regardless of where the sale is consummated,
is income derived from or connected with sources within this state.

Where a nonresident individual sells real or tangible personal property located in Tennessee, and as a result of such sale receives intangible personal property (for example, a note) that generates interest income or capital gain income, such interest income is generally not attributable to the sale of the real or tangible personal property but is attributable to the intangible personal property; however, such capital gain income is attributable to the sale of the real or tangible personal property located in Tennessee. Therefore, such interest income to a nonresident does not constitute income derived from or connected with Tennessee sources. However, interest income derived from an instrument received as a result of a sale of real or tangible personal property located in Tennessee, where the instrument is employed in a business, trade, profession or occupation carried on in this state, does constitute income derived from or connected with Tennessee sources.

(3) A nonresident individual, other than a dealer holding property primarily for sale to customers in the ordinary course of the dealer's trade or business, shall not be deemed to carry on a trade, business, profession or occupation in this state solely by

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reason of the purchase or sale of intangible property, or the purchase, sale or writing of stock option contracts, or both, for the nonresident's own account.

(d) Deductions with respect to net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with sources within this state, under rules adopted by the commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(e) A business, trade, profession or occupation (as distinguished from personal services as an employee) is carried on within Tennessee by a nonresident individual:

(1) If the individual occupies, maintains or operates desk space, an office, a shop, a store, a warehouse, a factory, an agency, or other place where such nonresident's affairs are systematically and regularly carried on, notwithstanding the occasional consummation of isolated transactions outside Tennessee; or

(2) If activities in connection with the business are conducted in Tennessee with a fair measure of permanency and continuity.

(f) If a nonresident individual, or a partnership of which the nonresident individual is a member, carries on a business, trade,

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profession or occupation (as distinguished from personal services as an employee) both within and without Tennessee, the nonresident taxpayer may elect, or the commissioner may require the taxpayer, to allocate [as provided in subdivision (1)], or to apportion [as provided in subdivision (2)], to Tennessee on a fair and equitable basis, the items of income, gain, loss and deduction attributable to such business, trade, profession or occupation. For this purpose, compensation paid to nonresident employees and officers shall be attributed to Tennessee in accordance with the provisions of this subsection. Once an individual elects, or the commissioner requires in writing, the use of either method (allocation or apportionment), the taxpayer shall continue to use that method unless, after application in writing to the commissioner, the commissioner makes a written determination that the method used no longer reflects income that is fairly attributable to Tennessee. The methods to be used for allocation or apportionment are set forth in subdivisions (1) and (2) below.

(1) If the books of the business are kept so as regularly to disclose, to the satisfaction of the commissioner, the proportion of the net amount of the items of income, gain, loss and deduction derived from or connected with Tennessee sources, then the Tennessee nonresident income tax return of the nonresident individual shall disclose the total amount of such items, the net amount of such items allocated to Tennessee, and the basis upon

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which such allocation is made. If income is reported using this method, then the taxpayer shall consistently allocate the amounts of income on returns filed with any other state in which the taxpayer carries on business where such states permit allocation on the basis of separate books and records.

(2) If the books and records of the business do not disclose, to the satisfaction of the commissioner, the proportion of the net amount of the items of income, gain, loss and deduction attributable to the activities of the business carried on in Tennessee, then such proportion shall be determined consistently with the provisions of § 67-4-2012, unless the commissioner by rule provides for some other method of apportionment.

(g) The Tennessee adjusted gross income derived from or connected with Tennessee sources of a nonresident individual rendering personal services as an employee includes the compensation for personal services entering into the individual's Tennessee adjusted gross income, but only if, and to the extent that, the services were rendered within Tennessee.

(1) When a nonresident employee, who is compensated on an hourly, daily, weekly or monthly basis, is able to establish the exact amount of pay received for services performed in

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Tennessee, such amount is included in Tennessee adjusted gross income derived from or connected with sources within this state.

(2) When no such exact determination of pay received for services performed in Tennessee is possible, the income of employees, who are compensated on an hourly, daily, weekly or monthly basis shall be apportioned to Tennessee by multiplying the total compensation wherever earned from the employment by a fraction, the numerator of which is the number of days spent working in Tennessee and the denominator of which is the total working days both within and without Tennessee. The product is included in Tennessee adjusted gross income derived from or connected with sources within this state. The term "total working days" does not include days on which the employee was not required to work, such as holidays, sick days, vacations and paid or unpaid leave. For purposes of this section, when a working day is spent working partly in Tennessee and partly elsewhere, it is considered one-half (1/2) of a day spent working in Tennessee.

(3) If a nonresident employee performs services for more than one (1) employer both within and without Tennessee and is unable to determine the exact amounts earned or derived in Tennessee, then such employee shall determine separately for each employer the compensation attributable to Tennessee

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sources. The sum of the amounts of compensation attributable to Tennessee sources shall be included in determining the Tennessee adjusted gross income derived from or connected with sources within this state.

(h) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or connected with sources within this state.

(i) The Tennessee adjusted gross income derived from or connected with sources within Tennessee of a nonresident member of a professional athletic team includes that proportion of such individual's compensation received for services rendered as a member of such team that the duty days spent within Tennessee rendering services for such team in any manner during the taxable year bears to the total number of duty days rendering services for such team in any manner during the taxable year. In determining whether duty days are spent within Tennessee, travel days are duty days spent within Tennessee if Tennessee is the travel destination and are not duty days spent within Tennessee if Tennessee is not the travel destination; provided, when a game is scheduled to be played on a travel day, the duty day is considered to be spent where the game is scheduled to be played.

(j) For purposes of subsection (i), the following definitions apply:

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(1) "Member of a professional athletic team" includes, but is not limited to, active players, players on the disabled list, and any other persons who are required to travel with and perform services on behalf of a professional athletic team, on a regular basis, including coaches, managers, trainers and equipment managers.

(2) "Duty days" means all days, from the first day of the official pre-season training period of the professional athletic team through the day of the last game, including post-season games, in which such team competes or is scheduled to compete during the taxable year. "Duty days" include game days, travel days and practice days. For a member of a professional athletic team who renders services for a team on a day that is not otherwise a "duty day" (e.g., representing a team at an all-star game), the member's "duty days" include such a day. "Duty days" for any member joining a team during the season shall begin on the day such person becomes a member and for any member leaving a team during the season shall end on the day such person ceases to be a member. "Duty days" do not include any try-out or pre-season cut days that a player shall survive in order to obtain a contract or any days for which a member is not compensated and is not rendering services for the team in any manner because such

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person has been suspended without pay and prohibited from performing any services for the team.

(3) "Duty days spent within Tennessee" means duty days on which a member of a professional athletic team renders services, or is available to render services, for the member's team, within Tennessee. Days when a member is not available to render services for the team because of an injury are "duty days" for that member, but are not "duty days spent within Tennessee" for that member unless the team is based in Tennessee.

(4) "Compensation received for services rendered as a member of a professional athletic team" means the total compensation received for the official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year, plus any additional compensation received for rendering services for the team on a date that is not otherwise a "duty day" (e.g., compensation for representing a team at an all-star game) during the taxable year. "Compensation received for services rendered as a member of a professional athletic team" includes, but is not limited to, salaries, wages, guaranteed payments except as otherwise provided herein, bonuses, strike benefits, severance pay, and termination pay. Bonuses are includable in "compensation received for

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services rendered as a member of a professional athletic team” if they are earned as a result of play during the season or for playing in championship, playoff or “all star” games. Bonuses are also so includable if paid for signing a contract, unless all of the following conditions are met:

(A) Is solely in consideration of a nonresident athlete giving up amateur and free agent status and agreeing to be the exclusive property of the team;

(B) Is not conditional upon the athlete playing any games, or performing any subsequent services, for the team, or even making the team;

(C) Is separate from the payment of salary or any other compensation; and

(D) Is nonrefundable.

(k) It shall be presumed that the method provided under subsection (i) is a fair and equitable method of determining the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee. However, the portion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee may be

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determined on the basis of a method other than that provided under subsection (i), if:

(1) The member establishes, to the satisfaction of the commissioner, that another method is fairer and more equitable;
or

(2) In the discretion of the commissioner, the commissioner determines that the method provided under subsections (i) and (j) does not fairly and equitably reflect the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee.

(l) In the case of a nonresident entertainer or athlete (other than a member of a professional athletic team), who is paid specifically for a performance or athletic event in Tennessee, the entire amount received is included in Tennessee adjusted gross income derived from or connected with sources within Tennessee if the entertainer or athlete is carrying on a business, trade, profession or occupation in Tennessee (and entertainer or athlete's presence for business in Tennessee is not casual and isolated).

(m) In the case of a nonresident entertainer who is not paid specifically for a performance in Tennessee, the entertainer's Tennessee adjusted gross income derived from or connected with sources within

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Tennessee includes that proportion of the entertainer's income received from performances within and without Tennessee that the number of performances that the entertainer gave (or, in the case of an understudy, was available to give) within Tennessee during the taxable year bears to the total number of performances that the entertainer was obligated to perform (or, in the case of an understudy, was obligated to be available to perform), under contract or otherwise, within and without Tennessee during the taxable year.

(n) In the case of a nonresident athlete (other than a member of a professional athletic team) who is not paid specifically for athletic events in Tennessee, the athlete's Tennessee adjusted gross income derived from or connected with sources within Tennessee includes that proportion of the athlete's income received from athletic events within and without Tennessee that the number of athletic events within Tennessee in which the athlete played during the taxable year bears to the total number of athletic events within and without Tennessee in which the athlete played during the taxable year.

(o) Income directly or indirectly derived by an athlete, entertainer or performing artist, from closed-circuit and cable television transmissions of an event, other than events occurring on a regularly scheduled basis, taking place within this state as a result of the rendition of services by such athlete, entertainer or performing artist, shall constitute income

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derived from or connected with sources within this state only to the extent that such transmissions were received or exhibited within this state.

§ 67-2-211.

(a) In determining the Tennessee adjusted gross income of a resident partner of a partnership or a resident shareholder of an S corporation, any adjustments described in § 67-2-206, which relates to an item of partnership or S corporation income, gain, loss or deduction, shall be made in accordance with the partner's distributive share or a shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. If a partner's distributive share or a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, then the partner's or shareholder's share of such item shall be determined in accordance with the partner's or shareholder's share, for federal income tax purposes, of partnership or S corporation taxable income or loss generally.

(b) Each item of partnership and S corporation income, gain, loss or deduction shall have the same character for a partner or shareholder under this part as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner or shareholder as if it were realized directly from the source from which it was realized by the partnership or S corporation

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or as if it were incurred in the same manner as it was incurred by the partnership or S corporation.

(c) Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this part, the partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.

§ 67-2-212.

(a) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident partner includes the partner's distributive share of all items of partnership income, gain, loss and deduction entering into federal adjusted gross income to the extent such items are derived from or connected with Tennessee sources.

(b) In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(1) Characterizes payments to the partner as being for services or for the use of capital;

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(2) Allocates to the partner, as income or gain from sources without Tennessee, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources without this state to partnership income or gain from all sources, except as authorized in subsection (c) of this section; or

(3) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources within this state than the partner's proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (c).

(c)

(1) The character of partnership or corporation items for a nonresident partner or S corporation shareholder shall be determined in accordance with § 67-2-211.

(2) The effect of a special provision in a partnership agreement, other than a provision referred to in subsection (b), having the principal purpose of avoidance or evasion of tax under this part, shall be determined under § 67-2-211(c).

(d) The commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources within this

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state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as the commissioner may require.

(e) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident individual, who is a shareholder of an S corporation doing business or having the right to do business in this state, as defined in § 67-4-2004(7), includes such shareholder's pro rata share of the S corporation's separately computed income or loss entering into federal adjusted gross income to the extent such income or loss is derived from or connected with Tennessee sources.

(f) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident individual who is a shareholder of an S corporation doing business or having the right to do business in this state, as defined in § 67-4-2004(7), does not include such shareholder's pro rata share of the S corporation's nonseparately computed income or loss entering into federal adjusted gross income.

(g) With respect to a nonresident individual who is a shareholder of an S corporation doing business or having the right to do business in Tennessee, as defined in § 67-4-2004(7), the portion of such shareholder's pro rata share of the modifications described in § 67-2-206 relating to the S corporation's:

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(1) Separately computed income or loss that is derived from or connected with sources within Tennessee is to be determined so as to accord with the definition of the term "derived from or connected with sources within this state" set forth in § 67-2-210;

(2) Nonseparately computed income or loss is considered to be derived from or connected with sources without Tennessee.

(h) With respect to a nonresident shareholder of an S corporation neither doing business nor having the right to do business in Tennessee, as defined in § 67-4-2004(7), no portion of such shareholder's pro rata share of the S corporation's separately or nonseparately computed income or loss, or the adjustments described in § 67-2-206 that relate to S corporation items of income or gain, is considered to be derived from or connected with sources within Tennessee.

§ 67-2-213.

(a) The income derived from or connected with sources within this state of a nonresident trust or estate shall be determined as follows:

(1) There shall be determined its share of income, gain, loss and deduction from Tennessee sources under § 67-2-212.

(2) There shall be added or subtracted, as the case may be, the amount derived from or connected with Tennessee sources of any income, gain, loss and deduction which would be

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included in the determination of federal adjusted gross income if the trust or estate were an individual and which is recognized for federal income tax purposes but excluded from the definition of federal distributable net income of the trust or estate.

(b) Deductions with respect to net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with sources within this state, under rules of the commissioner, but otherwise determined in the same manner as the corresponding federal deductions.

(c) The share of a nonresident trust or estate in trust or estate income, gain, loss and deduction derived from or connected with sources within this state; and the share of a nonresident beneficiary of any trust or estate, in trust or estate income, gain, loss and deduction derived from or connected with sources within this state; shall be determined as follows:

(1) There shall be determined the items of income, gain, loss and deduction which are derived from or connected with sources within this state, which would be included in the determination of federal adjusted gross income if the trust or estate were an individual and which enter into the definition of federal distributable net income of the trust or estate for the taxable year, including any such items from another trust or estate of which the subject trust or estate is a beneficiary. The

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determination of source shall be made in accordance with the provisions of § 67-2-207 in the same manner as for a nonresident individual.

(2) The amounts determined under subdivision (1) shall be allocated among the trust or estate and its beneficiaries, including, solely for the purpose of this allocation, resident beneficiaries, in proportion to their respective shares of federal distributable net income.

(3) The amount allocated under subdivision (2) shall have the same character under this part as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if it were realized directly from the source from which it was realized by the trust or estate, or as if it were incurred in the same manner as it was incurred by the trust or estate.

(d)

(1) If the trust or estate has no federal distributable net income for the taxable year, then the share of each beneficiary, including, solely for the purpose of this allocation, resident beneficiaries, in the net amount, determined under subdivision (a)(1), shall be in proportion to the beneficiary's share of the trust

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or estate income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the trust or estate.

(2) The commissioner may by rule establish such other method or methods of determining the respective shares of the beneficiaries and of the trust or estate in its income derived from sources within this state as may be appropriate and equitable. Such method may be used by the fiduciary whenever the allocation of such respective shares under subsections (c) and (d) would result in an inequity that is substantial in amount.

§ 67-2-214.

(a) Any resident individual or part-year resident individual of this state shall be allowed a credit against the tax otherwise due under this part in the amount of any income tax, levied on such resident or part-year resident for the taxable year by another state of the United States or the District of Columbia, on income derived from sources therein and which income is also subject to tax under this part.

(b) In the case of a resident individual, the credit provided under this section shall not exceed the proportion of the tax otherwise due under this part that the amount of the taxpayer's Tennessee adjusted gross

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income derived from or connected with sources in the other taxing jurisdiction bears to such taxpayer's Tennessee adjusted gross income under this part.

(c) In the case of a part-year resident individual, the credit provided under this section shall not exceed the proportion of the tax otherwise due during the period of residency under this part that the amount of the taxpayer's Tennessee adjusted gross income derived from or connected with sources in the other jurisdiction during the period of residency bears to such taxpayer's Tennessee adjusted gross income during the period of residency under this part, nor shall the allowance of the credit provided under this section reduce the tax otherwise due under this part to an amount less than what would have been due if the income subject to taxation by such other jurisdiction were excluded from Tennessee adjusted gross income.

(d)

(1) If, as a direct result of the change to or correction of a taxpayer's income tax return, filed with another state of the United States or the District of Columbia, by the tax officers or other competent authority of such jurisdiction, the amount of tax of such other jurisdiction that the taxpayer is finally required to pay is different than the amount used to determine the credit allowed to the taxpayer under this section, the taxpayer shall provide notice

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of such difference to the commissioner by filing, on or before the date that is ninety (90) days after the final determination of such amount, an amended return under this part, and shall concede the accuracy of such determination or state wherein it is erroneous. The commissioner may redetermine, and the taxpayer shall be required to pay, the tax plus interest for any taxable year affected.

(2) If, as a direct result of a taxpayer filing an amended income tax return with another state of the United States or the District of Columbia, the amount of tax of such other jurisdiction that the taxpayer is required to pay is different than the amount used to determine the credit allowed to the taxpayer under this section, then the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety (90) days after the date of filing of such amended return, an amended return under this part and shall give such information as the commissioner may require. The commissioner may redetermine and the taxpayer shall be required to pay the tax plus interest for any taxable year affected.

(3) In the case of a redetermination of the tax owing to another state of the United States or the District of Columbia resulting in a taxpayer owing additional taxes levied by this part, the statutory period for the assessment of additional taxes

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resulting from such redetermination shall not expire prior to two (2) years from the date the commissioner is notified in writing by the taxpayer of such revision. In the event that such redetermination results in a refund of the taxes levied by this part, the commissioner is authorized to make such refund provided the taxpayer makes a refund claim, or the commissioner is in possession of the proper proof of the refund, within three (3) years from the date of such determination by the other state or other such jurisdiction.

(e) A taxpayer shall not be allowed credit under this section if the taxpayer has claimed or will claim a credit against the income tax levied by the other jurisdiction for the tax paid or payable under this part.

(f) There shall be no credit for interest or penalties paid to another state or to the District of Columbia.

§ 67-2-215.

(a)

(1)(A) With respect to each of its nonresident partners or shareholders, each pass-through entity, doing business in this state or having income derived from or connected with sources within this state, shall for each taxable period, either:

(i) Timely file with the commissioner an agreement as provided in subdivision (2); or

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(ii) Make payment to the commissioner as provided
in subdivision (3) or subdivision (4).

(B) Any pass-through entity that timely files an agreement
as provided in such subdivision (2) with respect to a nonresident
partner or shareholder for a taxable period shall be considered to
have timely filed such an agreement for each subsequent taxable
period. Any pass-through entity which does not timely file such an
agreement for a taxable period shall not be precluded from timely
filing such an agreement for subsequent taxable periods.

(2)(A) An agreement under this subdivision shall be an
agreement, on a form as may be prescribed by the commissioner,
by a nonresident partner or shareholder of the pass-through entity:

(i) To file returns in accordance with all applicable
provisions of Title 67 and to make timely payment of all
taxes levied on the partner or shareholder by this state
measured by the income of the pass-through entity; and

(ii) To be subject to personal jurisdiction in this
state for purposes of the collection of all taxes, together
with related additions to tax, interest and penalties, levied
on the partner or shareholder by this state measured by
the income of the pass-through entity.

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(B) Such an agreement shall be considered timely filed for a taxable period and for all subsequent taxable periods if it is filed on or before the date the annual return for such taxable period is required to be filed pursuant to § 67-2-217, including extensions.

(3) For S corporations, the payment shall be in an amount equal to the tax rate provided in § 67-2-204 multiplied by the sum of:

(A) To the extent derived from or connected with sources within this state as reflected on the S corporation's annual return for the taxable period under § 67-2-217, the amount of such shareholder's pro rata share of the S corporation's nonseparately computed items, as defined in § 1366 of the Internal Revenue Code, to the extent includable in the shareholder's Tennessee adjusted gross income; and

(B) To the extent derived from or connected with sources within this state as reflected on the S corporation's annual return for the taxable period under § 67-2-217, the amount of such shareholder's pro rata share of the S corporation's nonseparately computed items, as defined in § 1366 of the Internal Revenue Code, to the extent includable, if the shareholder is an individual, in the

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shareholder's Tennessee adjusted gross income, or, if the shareholder is a trust or estate, in the shareholder's Tennessee adjusted gross income.

(4) For pass-through entities other than S corporations, the payment shall be in an amount equal to the tax rate provided in § 67-2-204 multiplied by, to the extent derived from or connected with sources within this state as reflected on the entity's annual return for the taxable period under § 67-2-217, the amount of the subject partner's distributive share of the entity's income determined under § 704 of the Internal Revenue Code.

(5) Any amount paid by the pass-through entity to this state with respect to any taxable period, pursuant to subdivisions (3) or (4), shall be considered to be a payment by the partner or shareholder on account of the tax measured by income levied on the partner or shareholder for such taxable period pursuant to this part. If the tax years of the pass-through entity and the partner, member or shareholder are different, then the payment by the pass-through entity shall be considered to be a payment by the partner, member or shareholder for the partner's, member's or shareholder's tax year which begins in the tax year of the pass-through entity. A pass-through entity shall be entitled to recover, by offset or otherwise, a payment made pursuant to this

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subdivision from the partner or shareholder on whose behalf the payment was made. Any estimated tax installment shall be made on or before the due date of such installment pursuant to § 67-2-218, and any other payment for a taxable period shall be made at or before the date the annual return for such taxable period is required to be filed pursuant to § 67-2-217.

(b) In lieu of partners or shareholders of pass-through entities filing separate returns under § 67-2-218, the commissioner may provide for the filing of a group return for electing nonresident partners or shareholders by a pass-through entity doing business in this state, as defined in § 67-4-2004(7), or having income derived from or connected with sources within this state. As required by the commissioner, the pass-through entity as agent for the electing partners or shareholders shall make the payments of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners or shareholders. The provisions of this subsection shall also apply to trusts and estates, and whenever reference is made in this subsection to pass-through entities and partners, such reference shall be construed as including trusts, estates and beneficiaries thereof.

(c) A pass-through entity making a payment required by subdivision (a)(3) or (a)(4) above shall be entitled to the credit that would otherwise be available to the nonresident shareholder, member or partner

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under § 67-2-235 if such nonresident shareholder, member or partner was actually paying the tax. Nonresident shareholders, members or partners for whom the pass-through entity is filing a group return pursuant to subsection (b) shall also be entitled to the credit provided for in § 67-2-234 for each shareholder, member or partner in the group.

§ 67-2-216.

(a) In lieu of members of professional athletic teams filing separate returns, under § 67-2-218, the commissioner may provide for the filing of a composite return for every qualifying nonresident member of a professional athletic team by such team, if such team is doing business in this state or the members of such team have compensation that is received for services rendered as members of such team and that is derived from or connected with sources within this state.

(b) If a professional athletic team is required to file a composite return pursuant to this section, then the commissioner may require such team, in lieu of deducting and withholding Tennessee income tax as may otherwise be required under § 67-2-221, to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by such qualifying nonresident members.

(c) The commissioner may require a professional athletic team, in lieu of deducting and withholding Tennessee income tax as may

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otherwise be required under § 67-2-221, to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by:

(1) Every resident member, but only with respect to compensation that is received for services rendered as a member of a professional athletic team; and

(2) Every nonresident member who is not a qualifying nonresident member, but only with respect to compensation that is received for services rendered as a member of a professional athletic team and that is derived from or connected with sources within this state.

(d) Any amount paid by a professional athletic team to this state with respect to any taxable period pursuant to this section shall be considered to be a payment by the member on account of the income tax levied on the member for such taxable period pursuant to this part. The team shall be entitled to recover a payment made pursuant to this section from the member on whose behalf the payment was made.

(e) For purposes of this section, “qualifying nonresident member” means a member of a professional athletic team who is a nonresident individual for the entire taxable year, who does not maintain a permanent place of abode in Tennessee at any time during the taxable year, who does not have income derived from or connected with sources within this

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state other than compensation that is received for services rendered as a member of a professional athletic team and that is derived from or connected with sources within this state.

§ 67-2-217.

(a) Each partnership having any income derived from sources in this state, determined in accordance with the provisions of this part, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction; the name, address and social security or federal employer identification number of each partner, whether or not a resident of this state, who would be entitled to share in the net income if distributed; the amount of the distributive share of each partner derived from or connected with sources within this state; the amount of the distributive share of each partner derived from or connected with sources without this state; and such other pertinent information as the commissioner may prescribe by rules or instructions. Such return shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the close of each taxable year. The partnership shall, on or before the day on which such return is filed, furnish to each person, who was a partner during the taxable year, a copy of such information as shown on the return. The provisions of this subsection shall also apply to trusts and estates, and their beneficiaries. Wherever reference is made in this subsection to partnerships and their partners, such reference shall

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be construed as including trusts and estates and their beneficiaries,
respectively.

(b) Each S corporation doing business in this state, as defined in § 67-4-2004(7), shall make a return for the taxable year setting forth all items of income, gain, loss and deduction; the name, address and social security or federal employer identification number of each shareholder; the pro rata share of each shareholder of S corporation income derived from or connected with sources within this state; the pro rata share of each shareholder of S corporation income derived from or connected with sources without this state; and such other pertinent information as the commissioner may prescribe by rules or instructions. Such return shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the close of each taxable year. The S corporation shall, on or before the day on which such return is filed, furnish to each person, who was a shareholder during the taxable year, a copy of such information as shown on the return.

§ 67-2-218.

(a) A taxpayer with Tennessee adjusted gross income shall file a Tennessee tax return with the commissioner on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year, containing such information as the commissioner may reasonably require, and on forms as prescribed by the commissioner. The commissioner is

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authorized to require taxpayers to include with the return copies of their federal tax return, including withholding statements, schedules and forms. The return shall coincide with the tax period covered by the taxpayer's federal return, if any.

(b) Without assessment, notice or demand, the taxpayer shall pay any tax due to the commissioner on or before the due date of the return, without regard to any extension of time for filing the return.

(c) For purposes of this section, there shall be four (4) required installments for each taxable year. The due date for the first (1st) required installment is the fifteenth (15th) day of the fourth (4th) month of the taxable year. The due date for the second (2nd) required installment is the fifteenth (15th) day of the sixth (6th) month of the taxable year. The due date for the third (3rd) required installment is the fifteenth (15th) day of the ninth (9th) month of the taxable year. The due date for the fourth (4th) required installment is the fifteenth (15th) day of the first month of the next succeeding taxable year.

(d)

(1) Except as provided in subdivision (2), the amount of any required installment shall be twenty-five percent (25%) of the required annual payment, as defined in subsection (o).

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(A) In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1), then the amount of such required installment shall be the annualized income installment, and any reduction in a required installment resulting from the application of this subdivision shall be recaptured by increasing the amount of the next required installment by the amount of such reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subdivision.

(B) In the case of any required installment, the annualized income installment is the excess, if any, of:

(i) An amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the Tennessee adjusted gross income for months in the taxable year ending before the due date for the installment, over

(ii) The aggregate amount of any prior required installments for the taxable year.

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(C) For purposes of this subdivision (2), the applicable percentage for the first (1st) required installment is twenty-two and one-half percent (22.5%), the applicable percentage for the second (2nd) required installment is forty-five percent (45%), the applicable percentage for the third (3rd) required installment is sixty-seven and one-half percent (67.5%), and the applicable percentage for the fourth (4th) required installment is ninety percent (90%).

(e) For purposes of subsection (f), the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. For purposes of subsection (f), the period of the underpayment shall run from the due date for the installment to whichever of the following dates is earlier: the fifteenth (15th) day of the fourth (4th) month of the next succeeding taxable year, or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subsection, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(f) Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax an amount determined by applying interest at the rate prescribed

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by § 67-1-801(a) to the amount of the underpayment for the period of the underpayment.

(g) The application of this section to taxable years of less than twelve (12) months shall be in accordance with rules adopted by the commissioner.

(h) Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income tax levied under this part for the taxable year.

(i) If an individual has paid as an installment of estimated tax an amount in excess of the amount determined to be the correct amount of such installment, then such amount shall be credited against any unpaid installment or against the tax. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, then, unless the individual has given written notice to the commissioner that such overpayment is to be refunded, such overpayment shall be credited against any installment of estimated tax due for the next succeeding taxable year.

(j)

(1) If the tax, reduced by the tax withheld under this part, shown on the return or otherwise, is five hundred dollars (\$500) or less, then no addition to tax shall be levied under subsection (f).

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(2) No addition to tax shall be levied under subsection (f)
for any taxable year if:

(A) The preceding taxable year was a taxable year
of twelve (12) months; and

(B) The individual did not have any liability for tax
for the preceding taxable year and throughout such year
the individual was:

(i) A resident individual; or

(ii) A nonresident individual or part-year
resident individual with income, gain, loss or
deduction derived from or connected with sources
within this state.

(k) For purposes of applying this section, the tax withheld under
this part shall be deemed a payment of estimated tax, and an equal part
of such tax withheld shall be deemed paid on each due date for such
taxable year, unless the taxpayer establishes the dates on which such tax
was actually withheld, in which case the tax so withheld shall be deemed
payments of estimated tax on the dates on which such tax was actually
withheld.

(l) If, on or before January 31 of the following taxable year, the
taxpayer files a return for the taxable year and pays in full the amount
computed on the return as payable, then no addition to tax shall be levied

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under subsection (f) with respect to any underpayment of the fourth required installment for the taxable year.

(m) For purposes of this section, if an individual is a farmer or fisherman for any taxable year, then the following provisions shall apply:

(1) There shall be only one (1) required installment for the taxable year;

(2) The due date for such installment shall be January 15 of the following taxable year;

(3) The amount of such installment shall be equal to the lesser of:

(A) Sixty-six and two-thirds percent (66.67%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66.67%) of the tax for such year; or

(B) If the preceding taxable year was a taxable year of twelve (12) months and the individual filed a return for the preceding taxable year, one hundred percent (100%) of the tax shown on the return for the preceding taxable year;

(4) If, on or before March 1 of the following taxable year, the farmer or fisherman files a return and pays in full the amount computed on the return as payable, then no addition to tax shall

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be levied under subsection (f) with respect to any underpayment of the required installment, as provided in subdivision (3), for the taxable year; and

(5) An individual is a farmer or fisherman for any taxable year if such individual is a farmer or fisherman, as defined in § 6654(i)(2) of the Internal Revenue Code, for the taxable year.

(n)

(1) Except as otherwise provided in this subsection, this section shall apply to any trust or estate.

(2) With respect to any taxable year ending before the date two (2) years after the date of the decedent's death, this section shall not apply to:

(A) The estate of such decedent, or

(B) Any trust:

(i) All of which was treated under §§ 671 to 679, inclusive, of the Internal Revenue Code as owned by the decedent, and

(ii) To which the residue of the decedent's estate will pass under the will or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration.

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(3) In the case of any trust or estate to which this section applies, for any required installment, the annualized income installment is the excess, if any, of:

(A) An amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the Tennessee adjusted gross income and the adjusted federal alternative minimum taxable income for months in the taxable year ending before the date one (1) month before the due date for the installment, over

(B) The aggregate amount of any prior required installments for the taxable year.

(o) "Required annual payment" means the lesser of:

(1) Ninety percent (90%) of the tax shown on the return for the taxable year, or if no return is filed, ninety percent (90%) of the tax for such year; or

(2) If the preceding taxable year was a taxable year of twelve (12) months and the taxpayer filed a return for the preceding taxable year, one hundred percent (100%) of the tax shown on the return of the taxpayer for such preceding taxable year.

§ 67-2-219.

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(a) An extension of time of four (4) months in which to file any return, statement or other document due or required under this part will be granted, provided that on or before the original due date of the return, the taxpayer makes the request and pays taxes equal to one hundred percent (100%) of the liability for the tax year for which the extension is being requested, and the extension request is made on a form prescribed by the department. The commissioner may require the filing of a tentative return and the payment of the tax reported to be due thereon in connection with any extension. Any additional tax which may be found to be due on the filing of a return, statement or other document as allowed by such extension shall bear interest at the rate prescribed by § 67-1-801(a) from the original due date of such tax to the date of actual payment. Notwithstanding the provisions of § 67-2-220, no penalty shall be imposed on account of any failure to pay the amount of tax reported to be due on a return, statement or other document within the time specified under the provisions of this part if the excess of the amount of tax shown on the return, statement or other document over the amount of tax paid on or before the original due date of such return, statement or other document is no greater than ten percent (10%) of the amount of tax shown on such return, statement or other document, and any balance due shown on such return, statement or other document is paid on or

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before the extended due date of such return, statement or other document.

(b) The commissioner may, in the commissioner's sole discretion, grant an additional extension of time of no more than two (2) months in which to file the return required by this part, on good and reasonable cause shown by the taxpayer before the due date of the return as extended under the provisions of subsection (a); provided, that if the taxpayer shows, within the time prescribed by this subsection, and on such form as may be prescribed by the commissioner, that the Internal Revenue Service has granted the taxpayer an extension of time to file the taxpayer's federal income tax return for the same taxable year, then the commissioner shall grant the taxpayer an extension of like amount to file the Tennessee tax return.

§ 67-2-220.

(a) If any taxpayer fails to pay the amount of tax reported to be due on the taxpayer's return within the time specified under the provisions of this part, then there shall be imposed a penalty equal to ten percent (10%) of such amount due and unpaid. Such amount shall also bear interest at the rate prescribed by § 67-1-801(a) from the due date of such tax until the date of payment.

(b) The commissioner may waive all or part of the penalties provided under this part, subject to the provisions of § 67-1-803.

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(c) In case of each failure to file a statement of payment to another person required under the authority of this part, including the duplicate statement of tax withheld on wages on the date prescribed therefor, determined with regard to any extension of time for filing, there shall be paid, upon notice and demand by the commissioner, by the person so failing to file the statement, a penalty of five dollars (\$5.00) for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed two thousand dollars (\$2,000). The commissioner may waive this penalty subject to the provisions of § 67-1-803.

§ 67-2-221.

(a) Each employer, maintaining an office or transacting business within this state and making payment of any wages taxable under this part to a resident or nonresident individual, shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this part with respect to the amount of such wages during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules promulgated by the commissioner.

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(b) The commissioner may by rule require persons other than employers:

(1) To deduct and withhold taxes from payments made by such persons to residents of this state, nonresidents and part-year residents;

(2) To file a withholding return as prescribed by the commissioner; and

(3) To pay over to the commissioner, or to a depository designated by the commissioner, the taxes so required to be deducted and withheld, in accordance with a schedule established in such rules.

(c) The commissioner may adopt rules providing for withholding from:

(1) Remuneration for services performed by an employee for the employer that do not constitute wages;

(2) Wages paid to an employee by an employer not maintaining an office or transacting business within this state; or

(3) Any other type of payment with respect to which the commissioner finds that withholding would be appropriate under the provisions of this part if the employer and the employee, or, in the case of any other type of payment, the person making and the person receiving such payment, agree to such withholding. Such

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agreement shall be made in such form and manner as the commissioner may, by rule, prescribe. For purposes of this part remuneration, wages or other payments with respect to which such an agreement is made shall be regarded as if they were wages paid to an employee by an employer maintaining an office or transacting business within this state to the extent that such remuneration or wages are paid or other payments are made during the period for which the agreement is in effect.

(d) If any person who is not an employer is required by rule to withhold wages or other payments, then the provisions of this section apply to such person as if the person were an employer and as if all amounts withheld were wages.

(e) Every employer, irrespective of whether or not such employer deducted and withheld the amounts as provided in this section, shall be liable for the amounts required to be deducted and withheld. If the employer, in violation of the provisions of this section, fails to deduct and withhold the amounts so provided and thereafter the tax, against which such amounts would have been credited, is paid, the amounts so required by this section to be deducted and withheld shall not be collected from the employer; but in no such case shall the employer be relieved from liability for any penalties, interest or additions to the amounts required under this

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section to be deducted and withheld otherwise applicable to any such failure to deduct and withhold.

(f) Every employer subject to the provisions of this section shall file a return, in such form as shall be determined by the commissioner, and remit the amount withheld at the same times the employer is required under federal law and regulations to pay over federal taxes required to be deducted and withheld. Failure to remit timely the amount withheld shall subject the employer to those penalties and interest described in § 67-1-801.

(g) Every employer who deducts and withholds any amounts under the provisions of this section shall hold the same in trust for the state of Tennessee for the payment thereof to the commissioner in the manner and at the time provided in this section. To secure the payment of any amounts withheld and not remitted as required by this section, the state shall have a lien upon all interests in property, either real or personal, tangible or intangible, owned or subsequently acquired by the employer, so long as any delinquency continues. The lien of the state shall be entitled to priority over any other lien of any kind whatsoever with regard to such trust fund taxes whether or not notice of the lien has been filed.

(h) All amounts deducted, withheld and remitted shall be considered as tax collected under the provisions of this section and no

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employee shall have any right of action against an employer in respect to any monies so deducted and withheld from wages and paid over to the commissioner in compliance or intended compliance with this section.

(i) Every employer required to deduct and withhold tax under this part from the wages of an employee shall furnish to each such employee in respect to the wages paid by such employer to such employee during the calendar year, on or before January 31 of the next succeeding year, a written statement as prescribed by the commissioner showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the commissioner shall prescribe.

(j) Every employer shall also file an annual statement with the commissioner summarizing the total compensation paid and the tax withheld for such employee during the preceding calendar year or any portion thereof, and providing such other information required by the commissioner. The statement shall be filed on or before March 1 of the year following that for which the report is made and shall be on such forms as prescribed by the commissioner.

(k) Failure to file the statements required by subsection (j) within the time prescribed therefor shall subject the employer to a penalty of five hundred dollars (\$500) for each such failure, which shall be in addition to any criminal penalty otherwise provided for failure to file a return or for

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filing a false or fraudulent return. The commissioner may waive this penalty subject to the provisions of § 67-1-803.

(l) No later than fifteen (15) days after becoming subject to the withholding provisions of this section, every employer shall register with the department by completing and filing a registration information form prescribed by the commissioner. Whenever an employer ceases doing business, or for any other reason is no longer subject to the withholding provisions of this section, it shall so notify the commissioner within fifteen (15) days thereof. Any employer who fails timely to register or notify the commissioner shall be subject to a penalty of one thousand dollars (\$1,000). The commissioner may waive this penalty subject to the provisions of § 67-1-803.

(m)

(1) Liability for taxes or withholding under this part may be challenged only upon compliance with the provisions of § 67-1-1801 or § 67-1-1802, except as provided in § 67-2-233(a).

(2) No court shall enjoin payment, withholding or collection of the tax levied under this part, and no court shall enjoin or in any manner impede reporting, administration, or enforcement under this part, except that collection or withholding from a plaintiff in a suit instituted in compliance with § 67-1-1801 shall be stayed upon

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that plaintiff's compliance with the provisions for stay set out in that section.

(n) The commissioner may establish by rule periodic filing and payment dates in those instances where the commissioner deems it to be in the best interests of the state to do so.

(o) Wages upon which tax is required to be withheld shall be taxable under this part as if no withholding were required, but any amount of tax actually deducted and withheld in any calendar year shall be deemed to have been paid to the commissioner on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year.

(p) The commissioner may adopt rules requiring returns of information to be made and filed on or before April 15 of each year by any person making payment or crediting in any calendar year amounts of one hundred dollars (\$100) or more, or ten dollars (\$10) or more in the case of interest or dividends, to any person who may be subject to the tax levied under this part. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of dividends, interest, rents, salaries, wages, premiums, annuities compensations, remuneration, pensions,

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gambling winnings, emoluments or other fixed or determinable gains, profits, or income, except interest coupons payable to bearer. The commissioner may also require that persons making the returns under this subsection furnish to their payees, on or before January 31 of the next succeeding year, a written statement as prescribed by the commissioner showing the amount of payment which has been reported to the commissioner in respect of such payee.

§ 67-2-222. Employers shall also be subject to the provisions of § 67-1-703 relative to payment in immediately available funds and electronic filings. Notwithstanding the provisions of § 67-1-703 to the contrary, an employer who is required by federal law to file its return electronically or to make payment of withheld taxes in immediately available funds, shall file and pay its Tennessee return and liability in like manner.

§ 67-2-223.

(a) If the amount of any taxpayer's adjusted gross income or taxable income reported on the taxpayer's federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, resulting in a change in the amount of tax due under this part, then the taxpayer shall pay any additional tax due, plus interest, and file an amended return under this part, or such other form as the commissioner shall prescribe,

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reporting such change or correction, within ninety (90) days after the final determination of such change, correction, or renegotiation, and shall concede the accuracy of such determination or state wherein it is erroneous.

(b) Any taxpayer filing an amended federal income tax return shall also file within ninety (90) days thereafter an amended return under this part and pay any additional tax due, plus interest, pursuant to § 67-1-801.

(c) In the case of a redetermination of adjusted gross income by the Internal Revenue Service resulting in a taxpayer owing additional taxes levied by this part, the statutory period for the assessment of additional taxes resulting from such redetermination shall not expire prior to two (2) years from the date the commissioner or the commissioner's delegate is notified in writing by the taxpayer of such revision. In the event that such redetermination results in a refund of the taxes levied by this part, the commissioner is authorized to make such refund provided the taxpayer makes a refund claim, or the commissioner is in possession of the proper proof of the refund, within one (1) year from the date of such determination by the Internal Revenue Service.

§ 67-2-224.

(a) The commissioner is authorized to enter into an agreement with the secretary of the treasury of the United States or the secretary's designee, under which the secretary or the designee will assist in the

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overall administration of the tax levied by this part. The cost of the services performed by the secretary or the designee in such activities under the terms of any agreement may be paid from the appropriations for the general operations of the department of revenue.

(b) The commissioner is authorized to enter into an agreement with the secretary of the treasury of the United States or the secretary's designee, under which the commissioner will assist in the overall administration of tax administration functions in respect to the federal income tax. Such agreement shall make provision for the payment by the United States of costs of the services performed on its behalf.

(c) The commissioner may enter into agreements with the secretary of the treasury of the United States to provide for the compliance with this part of each department or agency of the United States in withholding of state income taxes from the wages of federal employees and paying the same to this state.

(d) The commissioner may enter into agreements with the tax officers of other states, which require income tax to be withheld from the payment of wages and salaries, so as to govern the amounts to be withheld from the wages and salaries of residents of such states under this part. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules prescribed by the commissioner, may relieve employers in this state from

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withholding income tax on wages and salaries paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax officers of such other states grant similar treatment to residents of this state.

§ 67-2-225.

(a) Any return, declaration, statement or other document required to be made pursuant to this part shall be signed if required by, and then in accordance with, rules adopted or instructions prescribed by the commissioner. The fact that an individual's name is signed to a return, declaration, statement or other document shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by such individual.

(b) Any return, statement or other document required of a partnership shall be signed by one (1) or more partners if required by and then in accordance with rules adopted or instructions prescribed by the commissioner. The fact that a partner's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Any return, statement or other document required of an S corporation shall be signed by one (1) or more officers if

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required by and then in accordance with rules adopted or instructions prescribed by the commissioner. The fact that an officer's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that such officer is authorized to sign on behalf of the S corporation.

(d) The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this part, including a copy of a federal income tax return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 67-2-226. Any person, required to collect or withhold, truthfully account for and pay over the tax levied under this part, who willfully fails to collect or withhold such tax or truthfully account for and pay over such tax, shall be liable for the total amount of the tax evaded, or not accounted for and paid over, plus interest thereon, and a penalty equal in amount to the total tax evaded, or not collected or withheld, or not accounted for and paid over.

§ 67-2-227. A nonresident who withholds taxes in compliance with this part shall not be subjected to any other tax in this state solely by reason of such withholding.

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§ 67-2-228. No tax levied on any taxpayer by the provisions of this part shall be reduced, modified, obligated or expended as an incentive for any person to conduct, locate or expand any business in this state. Nothing in this section shall prohibit the general assembly from appropriating any funds for this purpose.

§ 67-2-229. Any husband and wife who elect to file a joint return under the federal income tax for any taxable year shall be required to file jointly with respect to such taxable year for purposes of this part, in which event their tax liability shall be joint and several, except as otherwise provided in § 67-2-230, and any husband and wife, who elect to file separately under the federal income tax for any taxable year, shall be required to file separately with respect to such taxable year for purposes of this part; provided:

(1) If either the husband or wife is a resident and the other is a nonresident, then separate taxes shall be determined on their separate Tennessee adjusted gross incomes on separate forms as married individuals filing separately unless such husband and wife determine their federal taxable income jointly and both elect to determine their joint Tennessee adjusted gross income as if both were residents; or

(2) If any husband and wife, both of whom are nonresidents, elect to file a joint return under the federal income tax for any taxable year, and only one of them has income derived from or connected with sources within this state during such taxable year, then only the spouse with income derived from or connected with sources within this state shall be

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required to file a return in this state; and if only the spouse with income derived from or connected with this state files such a return in this state, then a separate tax shall be determined on such spouse's separate Tennessee adjusted gross income as a married individual filing separately, unless such husband and wife both elect to determine their joint Tennessee adjusted gross income as if both had income derived from or connected with sources within this state.

§ 67-2-230.

(a) Any individual who has made a joint return under this part may elect to seek relief under the provisions of subsection (b) and if such individual is eligible to elect the application of subsection (c), then such individual may, in addition to any election under subsection (b), elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c).

(b)

(1) Under procedures prescribed by § 67-1-1801 for taxpayer conferences, if:

(A) A joint return has been made for a taxable year and on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;

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(B) The other individual filing the joint return establishes that in signing the return such other individual did not know, and had no reason to know, that there was such an understatement;

(C) Taking into account all the facts and circumstances, it is inequitable to hold such other individual liable for the deficiency in tax for such taxable year attributable to such understatement or portion of such understatement, as the case may be; and

(D) Such other individual elects the application of this subsection, in such form as the commissioner may prescribe, not later than the date which is two (2) years after the date the commissioner has begun collection activities with respect to the individual making the election; then such other individual shall be relieved of liability for tax, including interest, penalties and other amounts due for such taxable year to the extent such liability is attributable to such understatement.

(2) If the electing individual satisfies the conditions of subdivision (1) except subdivision (1)(B), and establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, then such individual

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shall be relieved of liability for tax, including interest, penalties and other amounts due for such taxable year to the extent such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

(c)

(1) If an individual who has made a joint return for any taxable year elects the application of this subsection, then the individual's liability for any deficiency that is assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to such individual under subsection (d).

(2) The electing individual shall have the burden of proof with respect to establishing the portion of any deficiency allocable to such individual.

(3) An individual shall be eligible to elect the application of this subsection if:

(A) At the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or

(B) Such individual was not a member of the same household as the individual with whom such joint return

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was filed at any time during the twelve (12) month period
ending on the date such election is filed.

(4) If assets were transferred between individuals filing a
joint return as part of a fraudulent scheme by such individuals,
then an election under this subsection by either individual shall be
invalid.

(5) If the individual electing under this subsection had
actual knowledge, at the time such individual signed the return, of
any item giving rise to a deficiency or portion thereof which is not
allocable to such individual under subsection (d), then the election
shall not apply to such deficiency or portion thereof, unless the
individual with actual knowledge establishes that the electing
individual signed the return under duress.

(6) The portion of the deficiency for which the individual
electing under this subsection is liable shall be increased by the
value of any disqualified asset transferred to the individual. For
purposes of this section, "disqualified asset" means any property
or right to property transferred to an electing individual with
respect to a joint return by the other individual filing such joint
return if the principal purpose of the transfer was the avoidance of
tax or payment of tax. Any transfer which is made after the date
that is one (1) year before the date on which a notice of proposed

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deficiency assessment is sent, other than any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree or to any transfer which an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax, shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(d)

(1) The portion of any deficiency on a joint return allocated to an individual electing under subsection (c) shall be the amount that bears the same ratio to such deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under this subdivision bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency or portion thereof is attributable to the disallowance of a credit, and such item is allocated to one individual under subdivision (3), then such deficiency or portion thereof shall be allocated to such individual. Any such item shall not be taken into account under subdivision (1).

(3) Except as provided in subdivisions (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the

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taxable year. If the allocation of any item is appropriate due to fraud of one or both individuals, then the commissioner may provide for such allocation in a manner as prescribed in rules adopted in accordance with Title 67, Chapter 1.

(4) If a credit under § 67-2-214 would be disallowed in its entirety solely because a separate return is filed, then such disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the joint filers appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, then such liability shall be disregarded in computing the separate liability of either joint filer and such liability shall be allocated appropriately between the joint filers.

(e) The commissioner shall conduct an informal conference, determine what relief, if any, is available to an electing individual under this section, issue a conference decision, and give the individual written notification of the decision in the manner prescribed for informal conferences pursuant to § 67-1-1801.

(f) The commissioner shall, by mail at the last known address, notify the non-electing individual filing the joint return of the election and offer that individual an opportunity to participate in any informal conference.

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§ 67-2-231. If a non-resident's income derived from or connected with Tennessee sources is five hundred dollars (\$500) or less, **then** the commissioner may exempt the non-resident from payment of the tax levied by this part.

§ 67-2-232. The taxes collected under this part shall be earmarked for and allocated to the general fund.

§ 67-2-233. Notwithstanding any provision of law to the contrary, except as provided in § 67-2-223(c) an income tax refund shall not be made unless:

(1) The refund claim is filed within one (1) year from December 31 of the year in which payment was made, or

(2) If no refund claim has been filed but the commissioner is in possession of proper proof and facts that a refund is due, the commissioner makes the refund within one (1) year from December 31 of the year in which payment was made.

§ 67-2-234.

(a) Notwithstanding any of provision of law to the contrary, a taxpayer that receives a valid tax credit certificate from:

(1) Any subchapter S corporation;

(2) Any limited liability company, professional limited liability company, limited partnership, registered limited liability partnership, professional registered limited liability partnership, or other entity that is treated as a partnership for federal income tax purposes; or

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(3) Any limited liability business entity [except for qualified subchapter S subsidiaries with an election in effect under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code and qualified real estate investment trust subsidiaries described in Section 856(l) of such Code], which is disregarded as an entity separate from its owner for federal income tax purposes and which has as its single owner a person subject to the tax under this part or a not-for-profit entity, and which has as its single owner a person subject to the tax under this part or a not-for-profit entity;

may take a credit against the Tennessee flat tax levied by this part for the lesser of:

(i) The amount of excise tax due that was paid on the entity's excise tax return, as shown on the tax credit certificate form for the tax year coinciding with the income tax year, that is attributable to the passed-through net income; or

(ii) The amount of excise tax due that was paid on the entity's excise tax return, as shown on the tax credit certificate form for the tax year coinciding with the flat tax year, that is attributable to the passed-through net income, times a fraction, the numerator of which shall be the flat tax rate provided in § 67-2-204 and denominator of which shall be the excise tax rate provided in § 67-4-2007.

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(b) A taxpayer may take the credit provided for in subsection (a) above only if a copy of the tax credit certificate for the coinciding tax year is attached to its Tennessee flat tax return.

§ 67-2-235. Notwithstanding any provision of this part to the contrary, for any taxable year ending on or before December 31, 2003, "required annual payment," for purposes of § 67-2-218, means seventy percent (70%) of the tax shown on the return for the taxable year, or if no return is filed, seventy percent (70%) of the tax for such year.

§ 67-2-236. Notwithstanding any provision of this title to the contrary, the commissioner may waive all or part of any penalty imposed under this part and arising out of a taxable period ending on or before December 31, 2003, upon written request of the taxpayer, if the commissioner determines, in the commissioner's sole discretion, that the taxpayer has shown good and reasonable cause for the failure; provided that no penalty shall be waived if the failure is the result of gross negligence or willful disregard of the law.

§ 67-2-237. Notwithstanding any provision of this part to the contrary, a taxpayer may take a credit against the Tennessee flat tax in the amount of his or her payment of professional privilege tax, pursuant to Tennessee Code Annotated, Title 67, Chapter 4, Part 17, for the most recently concluded tax period.

§ 67-2-238.

(a)

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(1) Notwithstanding any provision of this part to the contrary, not later than ninety (90) calendar days following passage of this act, each employer, who maintains an office or transacts business within this state and makes payment of any wages to a resident or nonresident individual, must register with the department by completing and filing withholding registration information forms prescribed by the commissioner. The forms shall include the name, address and social security number of each person to whom taxable wages are currently being paid by the employer.

(2) Notwithstanding any provision of Title 29, Chapter 14, Part 1, or any other law to the contrary, any nongovernmental employer required to register and file withholding registration information forms may bring an action, in the Chancery Court of Davidson County, for declaratory judgment concerning the constitutionality or validity of the tax levied in this part; provided, however, such action must be brought not later than ninety (90) calendar days following passage of this act. Appeal from any such action shall be taken directly to the supreme court. Because of the paramount public interest in stability and certainty in the state's revenue system, it is the legislative intent that any such action be handled in an expedited manner by the chancery court and that any appeal from such action be handled in an expedited manner by the supreme court.

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(4) Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following language as a new, appropriately designated section:

§ 67-4-2019.

(a) Notwithstanding any provision of law to the contrary:

(1) Any subchapter S corporation;

(2) Any limited liability company, professional limited liability company, limited partnership, registered limited liability partnership, professional registered limited liability partnership, or other entity that is treated as a partnership for federal income tax purposes; or

(3) Any limited liability business entity [except for qualified subchapter S subsidiaries with an election in effect under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code and qualified real estate investment trust subsidiaries described in Section 856(l) of such Code], which is disregarded as an entity separate from its owner for federal income tax purposes and which has as its single owner a person subject to the tax under this part or a not-for-profit entity;

that pays excise tax to this state and, for federal income tax purposes, passes its net income, or a portion thereof, through to a Tennessee member, partner or shareholder subject to the Tennessee flat tax shall complete a tax credit certificate form for each Tennessee member,

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partner or shareholder as prescribed by the department. The form shall show the amount of excise tax paid that is attributable to the net income passed-through to the Tennessee member, partner or shareholder and such other information as the commissioner may require.

(b) A business entity completing the tax credit certificate form required by subsection (a) above shall, at the same time it files provides the Internal Revenue Service with information concerning the amount of net income passed-through to such member, partner or shareholder for federal income tax purposes, retain a copy of the form, mail two (2) copies to the Tennessee member, partner or shareholder to which it applies and mail one (1) copy of the form to the department.

(c) Commission of fraud, as determined by the commissioner, in complying, or failing to comply, with this section shall result in a penalty assessment of one hundred percent (100%) of any taxes evaded by the business entity or a member, partner or shareholder of the business entity.

(5) Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following language as a new, appropriately designated section:

§ 67-6-231.

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(a) Notwithstanding any provision of this chapter or any other law to the contrary, the retail sale of all alcoholic beverages shall be taxed at the rate of eight and one-half percent (8.5%).

(b) Notwithstanding any provision of this chapter or any other law to the contrary, the retail sale of all tobacco products shall be taxed at the rate of eight and one-half percent (8.5%).

(c) For purposes of this section:

(1) "Alcoholic beverages" shall mean and include all beverages, suitable for human consumption, that contain one-half (1/2) of one (1) per cent or more of alcohol by volume and are regulated pursuant to the provisions of Title 57, Chapters 3 through 5; and

(2) "Tobacco products" shall mean and include all cigarettes, cigars, cheroots, stogies, manufactured tobacco and snuff of all descriptions whether made of tobacco or any substitute therefor.

(6) Tennessee Code Annotated, Section 67-6-212, is amended by deleting the section in its entirety and by substituting instead the following:

§ 67-6-212.

(a) There is levied a tax at a rate of eight and one-half percent (8.5%) of the gross receipts or gross proceeds of each sale at retail of the following:

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(1) Dues or fees to any membership sports, leisure or recreation club, including free or complimentary dues or fees, when such are made in connection with a valuable contribution to any such establishment or organization, which shall have the value equivalent to the charge that would otherwise have been made, including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;

(2) Sales of tickets, fees or other charges made for admission to or voluntary contributions made to any place of amusement, sports, entertainment, leisure, exhibition, display or any other recreational event or activity, including free or complimentary admissions when made in connection with a valuable contribution to any organization or establishment holding or sponsoring such activities which shall have the value equivalent to the charge that would have otherwise been made;

(3) Charges made for the privilege of entering or engaging in any kind of recreational or leisure activity, when no admission is charged spectators, such as tennis, racquetball or handball courts;

(4) Charges made for the privilege of using tangible personal property for any amusement, sports, entertainment, leisure or recreational activity such as trampolines, golf carts, bowling shoes, skates or other sports and athletic equipment.

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(5) Charges made for the privilege of occupancy in any hotel, motel, inn, tourist camp, tourist court, tourist cabin or any other place in which rooms, lodging or other accommodations are regularly furnished to transients for a consideration;

(6) Sales of any prepared food. As used in this item, "prepared food" means:

(A) Food that is sold in a heated state or is heated by the seller;

(B) Two (2) or more food ingredients that are mixed or combined by the seller for sale as a single item; or

(C) Food that is sold with eating utensils provided by the seller, (including plates, knives, forks, spoons, glasses, cups, napkins, or straws). "Prepared food" does not include food that is only sliced, repackaged or pasteurized by the seller; and

(7) Charges and fees made for short term rentals of any automobile, passenger van or pickup truck. As used in this item, "short term" means any period of ninety (90) consecutive, calendar days or less.

(b) Free or complimentary dues or fees which shall have the value equivalent to the charge that would have otherwise been made shall be taxed under the provisions of this section, unless such free or

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complimentary dues or fees are provided to persons who attend a public school or public college or university.

(c) The provisions of this section shall not be construed to levy a tax on any sale or transfer of any interest in real property, regardless of whether or not such property is used for amusement or recreational purposes. The provisions of this section shall not be construed to levy a tax on any sale or transfer of any ownership interest in tangible personal property, regardless of whether or not such property is used for amusement or recreational purposes.

(d) The provisions of this section taxing charges for admission shall be construed to include all charges whatsoever made for admission to professional sporting events, including any charge for a seat license, skybox, luxury suite, or any other accommodation for spectators, whether styled as a license, lease, rental or otherwise.

SECTION 3. Notwithstanding any provision of this public chapter to the contrary, IF broadly-based implementation of Section 2(3) of this act is precluded through judicial determination of unconstitutionality OR IF the people authorize a constitutional

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convention pursuant to Section 1(18) of this act, THEN, effective
January 1, 2003, further implementation of Sections 1(12), 1(13), 1(14),
and 2 of this public chapter is suspended indefinitely; to such end,
Sections 1(12), 1(13), 1(14), and 2 of this public chapter are deleted
AND:

(1) Tennessee Code Annotated, Section 67-6-103(f), is amended by deleting the
words, figure and symbols "seven percent (7%)" and by substituting instead the
following:

five percent (5%)

(2) Tennessee Code Annotated, Section 67-6-202(a), is amended by deleting the
words, figure and symbols "seven percent (7%)" and by substituting instead the
following:

five percent (5%)

(3) Tennessee Code Annotated, Section 67-6-203(a), is amended by deleting the
words, figure and symbols "seven percent (7%)" and by substituting instead the
following:

five percent (5%)

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(4) Tennessee Code Annotated, Sections 67-6-204(a) and (c), are amended by deleting the words, figure and symbols "seven percent (7%)" and by substituting instead the following:

five percent (5%)

(5) Tennessee Code Annotated, Section 67-6-205(a), is amended by deleting the words, figure and symbols "seven percent (7%)" and by substituting instead the following:

five percent (5%)

(6) Tennessee Code Annotated, Section 67-6-202, is amended by adding the following language as a new, appropriately designated subsection:

(c) Notwithstanding any provision of this section, chapter or other law to the contrary, in addition to tax imposed pursuant to §§ 67-3-1301 or 67-3-1302, there is levied a tax at the rate of two percent (2%) of the sales price of each gallon of gasoline, fuel alcohol and substitutes therefor, as well as the sales price of each gallon of diesel fuel and any other fuel other than gasoline that is suitable for use in a diesel-powered vehicle. The tax levied by this subsection shall be in lieu of any tax otherwise levied by this section or chapter on the sales price of products specified within this subsection.

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(7) Tennessee Code Annotated, Section 67-6-212, is amended by deleting the section in its entirety and by substituting instead the following:

§ 67-6-212.

(a) There is levied a tax at a rate of six percent (6%) of the gross receipts or gross proceeds of each sale at retail of the following:

(1) Dues or fees to any membership sports, leisure or recreation club, including free or complimentary dues or fees, when such are made in connection with a valuable contribution to any such establishment or organization, which shall have the value equivalent to the charge that would otherwise have been made, including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;

(2) Sales of tickets, fees or other charges made for admission to or voluntary contributions made to any place of amusement, sports, entertainment, leisure, exhibition, display or any other recreational event or activity, including free or complimentary admissions when made in connection with a valuable contribution to any organization or establishment holding or sponsoring such activities which shall have the value equivalent to the charge that would have otherwise been made;

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(3) Charges made for the privilege of entering or engaging in any kind of recreational or leisure activity, when no admission is charged spectators, such as tennis, racquetball or handball courts;

(4) Charges made for the privilege of using tangible personal property for any amusement, sports, entertainment, leisure or recreational activity such as trampolines, golf carts, bowling shoes, skates or other sports and athletic equipment.

(5) Charges made for the privilege of occupancy in any hotel, motel, inn, tourist camp, tourist court, tourist cabin or any other place in which rooms, lodging or other accommodations are regularly furnished to transients for a consideration;

(6) Sales of any prepared food. As used in this item, "prepared food" means:

(A) Food that is sold in a heated state or is heated by the seller;

(B) Two (2) or more food ingredients that are mixed or combined by the seller for sale as a single item; or

(C) Food that is sold with eating utensils provided by the seller, (including plates, knives, forks, spoons, glasses, cups, napkins, or straws). "Prepared food" does not include food that is only sliced, repackaged or pasteurized by the seller; and

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(7) Charges and fees made for short term rentals of any automobile, passenger van or pickup truck. As used in this item, "short term" means any period of ninety (90) consecutive, calendar days or less.

(b) Free or complimentary dues or fees which shall have the value equivalent to the charge that would have otherwise been made shall be taxed under the provisions of this section, unless such free or complimentary dues or fees are provided to persons who attend a public school or public college or university.

(c) The provisions of this section shall not be construed to levy a tax on any sale or transfer of any interest in real property, regardless of whether or not such property is used for amusement or recreational purposes. The provisions of this section shall not be construed to levy a tax on any sale or transfer of any ownership interest in tangible personal property, regardless of whether or not such property is used for amusement or recreational purposes.

(d) The provisions of this section taxing charges for admission shall be construed to include all charges whatsoever made for admission to professional sporting events, including any charge for a seat license, skybox, luxury suite, or any other accommodation for spectators, whether styled as a license, lease, rental or otherwise.

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(8) Tennessee Code Annotated, Section 67-6-702(a)(1), is amended by deleting the following words and punctuation:

is authorized to levy a tax on the same privileges subject to this chapter as the same may be amended,

and by substituting instead the following words and punctuation:

is authorized to levy a tax on those same privileges that were subject to taxation under this chapter as of June 30, 2002,

(9) Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following language as a new, appropriately designated section:

§ 67-6-231.

(a) Notwithstanding any provision of this chapter or any other law to the contrary, the retail sale of all alcoholic beverages shall be taxed at the rate of six percent (6%).

(b) Notwithstanding any provision of this chapter or any other law to the contrary, the retail sale of all tobacco products shall be taxed at the rate of six percent (6%).

(c) For purposes of this section:

(1) "Alcoholic beverages" shall mean and include all beverages, suitable for human consumption, that contain one-half (1/2) of one (1) per cent or more of alcohol by volume and are regulated pursuant to the provisions of Title 57, Chapters 3 through 5; and

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(2) "Tobacco products" shall mean and include all cigarettes, cigars, cheroots, stogies, manufactured tobacco and snuff of all descriptions whether made of tobacco or any substitute therefor.

(10) Tennessee Code Annotated, Section 67-6-102(2), is amended by deleting the language therein in its entirety and substituting instead the following:

(2) "Business" includes any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect. "Business" includes occasional and isolated sales and transactions involving the transfer of aircraft, vessels, or motor vehicles between corporations or other business entities and their members or stockholders. "Business" includes transactions caused by the merger, consolidation, or reorganization of corporations or other business entities. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. "Business" shall be construed to include occasional and isolated sales or transactions by any person involving aircraft, vessels or motor vehicles (which terms include trailers and special motor equipment sold in conjunction therewith), as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise specifically exempt under this chapter or are

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sales between persons who are: married, lineal relatives or spouses of lineal relatives, or siblings. Sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft which are so based shall constitute evidence thereof; "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by, or purchased from, a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction;

(11)

(a) Tennessee Code Annotated, Section 67-6-102(13), is amended by deleting subdivisions (G), (H) and (I).

(b) Tennessee Code Annotated, Section 67-6-102(24), is amended by deleting subdivision (F) and by substituting instead the following:

(F)

(i) "Retail sale," "sale at retail" and "retail sales price"

includes any service, and such service is subject to tax under this chapter, when that service is performed in Tennessee for a consideration. It is the legislative intent that all services performed

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in Tennessee be subject to sales tax unless specifically exempted in this chapter.

(ii) With respect to services, other than telecommunication services, such services shall be considered to be performed in Tennessee if:

(a) Performed completely in Tennessee; or

(b) Performed partially in Tennessee and partially outside of Tennessee, when the recipient or user of the service is located in Tennessee; or

(c) The place of performance cannot be determined, if the recipient or user of the service is located in Tennessee.

(iii) With respect to interstate telecommunication services, only those charges for interstate telecommunications which are originated or received in this state and which are billed or charged to a service address in Tennessee shall be subject to tax.

(iv) "Retail sale," "sale at retail" and "retail sales price" does not include charges by the state or its political subdivisions when providing on-street parking space for which charges are collected, or when operating or conducting a garage or parking lot which is unattended and such charges are collected by parking meters;

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(c) Tennessee Code Annotated, Section 67-6-102(25)(B), is amended by deleting the following words, figures and symbols:

; however, the fabrication of software by a person for such person's own use or consumption shall not be considered a taxable "use" under subdivision (30) or any other section of this chapter

(12) Tennessee Code Annotated, Section 67-6-102(30), is amended by deleting subdivision (D) and by substituting instead the following:

(D) "Telecommunications" does not include television programming or television services delivered by a provider of direct-to-home satellite service.

(13) Tennessee Code Annotated, Section 67-6-102, is amended by adding the following new subsection:

() "Service" means all activities engaged in for other persons for a consideration, when the primary objective of the purchaser is the receipt of the benefit (if any) of the activity performed, as distinguished from the receipt of property. In determining what is a service, the intended use or stated objective of the contracting parties shall not necessarily be controlling. "Service" does not include:

(A) During the period that § 56-4-218 remains in effect, the sale or servicing (by any domestic or foreign insurance company or any broker or agent or employee of such company), of any insurance policy pertaining

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to life, fire, marine, fidelity, surety, casualty, liability or any other form of insurance for which premium taxes are paid pursuant to Title 56, Chapter 4, Part 20;

(B) Educational courses or activities or other services, performed by any public or private college or university, for which students are charged tuition or other fees.

(14) Tennessee Code Annotated, Section 67-6-205, is amended by adding the following new subsection:

() The crediting provisions of §§ 67-6-313(f) and 67-6-507(a) are specifically made applicable to the services described in § 67-6-102(24)(F)(i), when all or part of the performance of those services takes place outside of Tennessee.

(15) Tennessee Code Annotated, Title 67, Chapter 6, Part 2 is amended by adding the following language as a new, appropriately designated section:

§ 67-6-233.

(a) There is levied a tax at the rate of five percent (5%) of the cost price for all services taxable under this chapter when the same are not sold but are used or consumed; provided, that there shall be no duplication of the tax.

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(1) Notwithstanding any provision of law to the contrary, all revenue generated by the tax on medical services, as defined in subsection (c), shall be deposited in the state general fund and earmarked for the TennCare program or its successor; provided, however, that such earmarked funds shall not diminish appropriations for the TennCare program or its successor.

(2) Notwithstanding any provision of this act or any other law to the contrary, during any calendar year the amount of sales tax collected from any one patient by any one provider of medical services, as defined in subsection (c), shall be limited to five hundred dollars (\$500) and, under such circumstance, the liability of the provider to the state shall be limited to five hundred dollars (\$500).

(c) "Medical services" shall mean any health care service obtained at, or through, a hospital, nursing home or any other health care institution defined in § 68-11-1-2(4), or from any health care provider licensed, certified or otherwise regulated pursuant to Title 63, (except veterinarians, athletic trainers, and electrologists).

(16) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following language as a new, appropriately designated section:

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§ 67-6-385. Exempt from the tax imposed by this chapter are services performed by bona fide employees for their employers, to the extent their compensation is in the form of salary, commissions, or other compensation traditionally and normally provided to bona fide employees. Whether or not a person is a bona fide employee shall be determined based on the totality of the circumstances. Factors to be considered include, but are not limited to, whether the person paying the compensation reports employee compensation to the internal revenue service, whether the alleged employee is covered under workers compensation laws, and whether the employer pays payroll taxes on account of its employment of the alleged employee.

(17) Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (f).

(18) Tennessee Code Annotated, Section 67-6-209, is amended by deleting the language therein in its entirety and substituting instead the following:

(a) If a manufacturer, producer, compounder or contractor erects or applies tangible personal property, which the manufacturer, producer, compounder or contractor has manufactured, produced, compounded or severed from the earth, then such person so using the tangible personal property shall pay the tax herein levied on the fair market value of such tangible personal property when used, without any deductions whatsoever; provided, that the

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foregoing shall not be construed to apply to contractors or subcontractors who fabricate, erect or apply tangible personal property which becomes a component part of a building, and which is not sold by them as a manufactured item.

(b) If a contractor or subcontractor hereinafter defined as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church, private nonprofit college or university and the tangible personal property is for church, private nonprofit college or university construction, then such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid. The exemption provided for herein for private nonprofit colleges or universities shall apply only to the state portion of the sale tax.

(c) The tax imposed by this section shall have no application if the contractor or subcontractor, and the purpose for which such tangible personal property is used, would be exempt from the sales or use tax under any other provision of this chapter. However, the transfer of tangible personal property by a contractor who contracts for the installation of such tangible personal property

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as an improvement to realty does not constitute a sale, except as provided in § 67-6-102(8).

(19)

(a) Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by deleting §§ 67-6-216, 67-6-217, 67-6-219, 67-6-221, 67-6-224, and 67-6-226 in their entirety.

(b) Tennessee Code Annotated, Section 67-6-218, is amended by adding the following language as a new, appropriately designated subsection:

(c) The provisions of subsections (a) and (b) shall apply only if the farmer or nurseryman is engaged exclusively in the business of producing food or fiber for human or animal consumption.

(20) Tennessee Code Annotated, Section 67-6-227, is amended by deleting the language “eight and one-quarter percent (8.25%)” and by substituting instead the language “five and three-quarters percent (5.75%)”.

(21) Tennessee Code Annotated, Section 67-6-301 is amended by deleting the language therein in its entirety and substituting instead the following:

The tax imposed by this chapter shall not apply to the direct product of the soil in the hands of the producer, and his immediate vendee.

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(22) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by deleting §§ 67-6-302, 67-6-303, 67-6-304, 67-6-305, 67-6-306, 67-6-307, 67-6-310, 67-6-311, and 67-6-312 in their entirety.

(23) Tennessee Code Annotated, Section 67-6-313, is amended by deleting subsections (b) through (j) in their entirety.

(24)

(a) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by deleting §§ 67-6-314, 67-6-316, 67-6-317, 67-6-318, 67-6-319, 67-6-320(a) and (c), 67-6-321, 67-6-322(a)(18), 67-6-325, 67-6-327, and 67-6-328 in their entirety.

(b) Tennessee Code Annotated, Section 67-6-320(b), is amended by deleting the following language:

or issued by a licensed pharmacist

(25)

(a) Tennessee Code Annotated, Section 67-6-329(a), is amended by deleting subdivisions (1), (2), (11), (12), and (14) through (22).

(b) Tennessee Code Annotated, Section 67-6-329, is amended by deleting subsection (b) and by substituting instead the following:

(b)

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Amendment No. 1 to SB3013

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AMEND Senate Bill No. 3013

House Bill No. 2937*

(1) Subdivisions (a)(3) through (10) shall only apply to a farmer who holds a valid agricultural exemption certificate issued by the department of revenue. Such certificate shall be valid for up to five (5) calendar years and shall be issued only if the applicant submits a copy of his or her most recent federal income tax return showing that seventy-five percent (75%) or more of his or her federal adjusted gross income resulted from farming operations conducted by the applicant in Tennessee.

(2) A person who is newly engaging in farming in this state may be issued a one-time, temporary agricultural exemption certificate if the applicant submits an affidavit stating that the applicant is initially entering farming operations and intends to derive seventy-five (75%) or more of his or her federal adjusted gross income from farming operations to be conducted by the applicant in Tennessee. Any such one-time, temporary certificate shall be valid for not more than one (1) calendar year.

(3) As used in this subsection, "farming operations" shall mean activities directly related to the production of food for human or animal consumption or related to the production of tobacco.

(26) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by deleting §§ 67-6-330(a)(1) through (9), 67-6-330(a)(11) through (19), 67-6-330(a)(21)

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AMEND Senate Bill No. 3013

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and (22), 67-6-331, 67-6-332, 67-6-333, 67-6-334, 67-6-335, 67-6-336, 67-6-339, 67-6-340, 67-6-342, 67-6-344, 67-6-346, 67-6-347, 67-6-348, 67-6-349, 67-6-350, 67-6-351, 67-6-352, 67-6-353, 67-6-354, and 67-6-355 in their entirety.

(27) Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by deleting §§ 67-6-528, 67-6-529, and 67-6-530 in their entirety.

(28) Tennessee Code Annotated, Section 67-6-206(a), is amended by designating the current language as subdivision (1) and by adding the following language, to be designated as subdivision (2):

(2) On forms supplied by the commissioner of revenue, each person or corporation or other business entity making tax exempt purchases of industrial machinery or component parts shall periodically report to the department the gross amount paid for all such newly acquired industrial machinery as well as the gross amount paid for all such newly acquired component parts.

(29) Tennessee Code Annotated, Section 67-6-322, is amended by adding the following language as new, appropriately designated subsections:

(i) Notwithstanding the provisions of this section or any other law to the contrary, **if** an entity enjoys tax exempt status pursuant to this section **and if** such tax exempt entity pays to a for-profit entity any royalty, rent, franchise fee, license fee, management fee, advisor fee, consulting fee or other charge,

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however designated, for the same or a similar purpose for which such payments are made, **and if** twenty-five percent (25%) or more of the governing boards of the tax exempt entity and the for-profit entity are comprised of the same individuals, **then** the tax exempt entity no longer qualifies for tax exempt status pursuant to this section.

(j) On forms supplied by the commissioner of revenue, each entity making tax-exempt purchases pursuant to this section shall periodically report to the department the gross amount of all such tax-exempt purchases.

SECTION 4. Notwithstanding any provision of this public chapter to the contrary, IF broadly-based implementation of Section 2(3) of this act is precluded through judicial determination of unconstitutionality OR IF the people authorize a constitutional convention pursuant to Section 1(18) of this act, THEN, effective July 1, 2003:

(1) Tennessee Code Annotated, Section 67-6-103(f), is amended by deleting the words, figure and symbols "five percent (5%)" and by substituting instead the following:
four and three-fourths percent (4.75%)

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(2) Tennessee Code Annotated, Section 67-6-202(a), is amended by deleting the words, figure and symbols "five percent (5%)" and by substituting instead the following:
four and three-fourths percent (4.75%)

(3) Tennessee Code Annotated, Section 67-6-203(a), is further amended by deleting the words, figure and symbols "five percent (5%)" and by substituting instead the following:

four and three-fourths percent (4.75%)

(4) Tennessee Code Annotated, Section 67-6-204(a) and (c), are amended by deleting the words, figure and symbols "five percent (5%)" and by substituting instead the following:

four and three-fourths percent (4.75%)

(5) Tennessee Code Annotated, Section 67-6-205(a), is amended by deleting the words, figure and symbols "five percent (5%)" and by substituting instead the following:
four and three-fourths percent (4.75%)

(6) Tennessee Code Annotated, Section 67-6-233(a), is amended by deleting the words, figure and symbols "five percent (5%)" and by substituting instead the following:
four and three-fourths percent (4.75%)

Amendment No. 1 to SB3013

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AMEND Senate Bill No. 3013

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(7) Tennessee Code Annotated, Section 67-6-231(a), is amended by deleting the words, figure and symbols "six percent (6%)" and by substituting instead the following:
eight and one-half percent (8.5%)

SECTION 5. Notwithstanding any provision of this public chapter to the contrary, Sections 3(14) and 4(5) of this public chapter are deleted effective January 1, 2006.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. Except as otherwise specifically provided to the contrary within the various sections of this act, this act shall take effect July 1, 2002, the public welfare requiring it.